EXHIBIT 2
INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT's Authorized Representative

TxDOT hereby designates the person serving from time to time as the Executive Director of TxDOT as its Authorized Representative and such other persons as the Executive Director may from time to time designate by notice to Developer. Any such designations by the Executive Director may be limited in scope and duration and may be revoked at any time by notice to Developer.

Developer's Authorized Representative

Developer hereby designates the person serving from time to time as the [Chief Executive Officer] of Developer as its Authorized Representative and such other persons as the [Chief Executive Officer] may from time to time designate by notice to TxDOT. Any such designations by the [Chief Executive Officer] may be limited in scope and duration and may be revoked at any time by notice to TxDOT.

EXHIBIT 3
FORM OF LEASE

Exhibit 3A Form of Lease

Exhibit 3B Form of Memorandum of Lease

EXHIBIT 3A
FORM OF LEASE

*** * * * ***

PROJECT LEASE
STATE HIGHWAY 288 TOLL LANES IN HARRIS COUNTY

This Project Lease (together with its exhibits and as amended from time to time, the "**Lease**") is entered into and effective as of [●] [*insert the Operating Commencement Date*], by and between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and [●], a [●] limited liability company ("**Developer**").

RECITALS

A. TxDOT and Developer have entered into that Comprehensive Development Agreement (State Highway 288 Toll Lanes in Harris County) dated as of [●] (the "**Agreement**"). In the Agreement, to which a form of this Lease constitutes Exhibit 3, TxDOT confers upon Developer certain rights to finance, develop, design, acquire, construct, use, toll, operate and maintain the Project described therein.

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

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

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

ARTICLE 1
LEASE, PREMISES, TITLE AND TERM

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

1.2 Exclusions and Reservations

(a) The Premises, and Developer's leasehold estate hereunder, specifically exclude any and all Airspace. There are hereby reserved to TxDOT all rights to own, lease, sell, assign, transfer, utilize, develop or exploit the Airspace for purposes of pursuing Business Opportunities to the extent permitted under, and subject to the terms of, Section 24.2 of the Agreement; and Developer shall not engage in any activity respecting or infringing upon the Airspace. TxDOT hereby reserves a non-exclusive easement over the Premises for access to and from the Airspace for development, maintenance, repair, replacement, operation, use and enjoyment of the Airspace for such purpose. (Airspace shall have the meaning provided in the Agreement.)

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

(c) TxDOT reserves the right to grant to other parties utility and other permits and easements and modifications thereto and rights of use to the extent and only to the extent provided in Sections 11.7 and 15.5 of the Agreement.

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

1.4 Term

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

(b) The term of this Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of this Lease, as provided in Section 31.10 of the Agreement.

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

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

ARTICLE 2
RENT, TAXES, OTHER CHARGES

2.1 Rent. As rent for the Premises, Developer shall pay to TxDOT the portion of the Revenue Payment Amount allocated to rent under this Lease, as set forth in Section 4.2 of the Agreement and Exhibit 6 to the Agreement. Developer's payment obligations are subject to the terms of the Agreement.

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

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

ARTICLE 3
USE

3.1 Use. During the term of this Lease, Developer shall use the Premises only for the purposes of performing the Work, holding the Project open for public use as a highway project, and tolling the Project

in accordance with the Agreement. Developer's right to perform the Work, hold the Project open for public use and toll the Project during the term of this Lease is hereby specifically permitted, authorized and granted by TxDOT. Such use shall be in accordance with and subject to the terms, provisions, conditions and limitations set forth in the CDA Documents.

3.2 Mechanic's Liens

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

(b) In the event any lien for labor or materials is recorded upon TxDOT's interest in the Premises, Developer shall, within 60 days after obtaining knowledge thereof, (i) record a valid release of lien; (ii) procure and record a bond in such form and amount and issued by such surety as is required by applicable Laws to release TxDOT's interest in the Premises from the lien and from any action brought to foreclose the lien; or (iii) deposit with a third-party escrow agent reasonably acceptable to TxDOT sufficient cash to cover the amount of the subject lien claim, including interest and costs; under irrevocable, binding authorization and instructions for the escrow agent to pay out of such deposit to any subsequent judgment holder the amount of any judgment arising from litigation with regard to the subject lien. The giving of any contrary instructions by Developer shall be strictly prohibited and constitute a default by Developer hereunder.

ARTICLE 4
ASSIGNMENT, SUBLETTING AND CHANGE OF CONTROL

4.1 Assignment by Developer

(a) Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber its interests in this Lease or the Premises except to the extent specifically permitted under Article 33 of the Agreement.

(b) Developer shall not sublease or grant any other special occupancy or use of the Premises to any other Person except to the extent specifically permitted under Article 33 of the Agreement.

(c) Developer shall not voluntarily or involuntarily cause, permit or suffer any Change of Control except to the extent specifically permitted under Article 33 of the Agreement.

4.2 Assignment by TxDOT. TxDOT may transfer and assign its rights, title and interests in the Agreement, this Lease and other CDA Documents as provided in Section 33.4 of the Agreement.

4.3 Notice and Assumption. Assignments and transfers permitted under Section 4.1 shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable assumption by the transferee (except as otherwise provided in Article 33 of the Agreement) in form and substance set forth in Section 33.5 of the Agreement.

ARTICLE 5
ENCUMBRANCE AND LENDER RIGHTS

5.1 Funding Agreements and Security Documents. The rights of Developer to mortgage, pledge, hypothecate, deed in trust or assign to any Lender Developer's interest in the leasehold estate created by this Lease, are set forth in, and subject to the terms and conditions of, Article 3 of the Agreement.

5.2 Lenders' Rights. Any Lender that holds a Funding Agreement and Security Document and satisfies the conditions and limitations set forth in Section 2.1 of the Direct Agreement (Exhibit 21 of the Agreement) shall have and retain the rights specified in the Direct Agreement, which rights, including Lender third party beneficiary rights, are, without duplication, applicable to this Lease.

ARTICLE 6
QUIET ENJOYMENT

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

6.2 Right of Entry. Developer shall permit TxDOT, the Independent Engineer and their respective authorized agents, employees, representatives, contractors and subcontractors to enter upon the Premises for any purpose relating to TxDOT's or the Independent Engineer's rights or obligations under the CDA Documents or Independent Engineer Agreement or under any other circumstances specified in this Lease and/or the other CDA Documents, including (a) entry upon the Premises to monitor, inspect and audit the same and Developer's activities as provided in the CDA Documents and (b) TxDOT's right to enter upon the Premises in the exercise of any of its remedies under Section 29.4 of the Agreement or upon effective termination of the Agreement. No such exercise of the right of entry or loss of use of the Premises by reason thereof shall be compensable, except to the extent of any Compensation Amount or Termination Compensation that may be owing pursuant to the Agreement.

ARTICLE 7
DEFAULTS AND REMEDIES

7.1 Events of Default. The events constituting a default of Developer under this Lease consist of (a) failure by Developer to timely pay to TxDOT monies due and payable to TxDOT hereunder; (b) failure by Developer to observe and perform any covenant, term or condition required to be observed or performed by Developer under this Lease; and (c) each and every other Developer Default set forth in Section 29.1 of the Agreement. For each of the above events constituting a default of Developer under this Lease, Developer shall be entitled to notice of default and opportunity thereafter to cure to the extent provided in the Agreement.

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

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

ARTICLE VIII
SURRENDER ON TERMINATION

8.1 Surrender. On the Termination Date, this Lease shall terminate and Developer shall surrender possession and control of the Premises to TxDOT in accordance with all provisions of the CDA Documents, including but not limited to Articles 20 and 31 of the Agreement.

ARTICLE IX
MISCELLANEOUS

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

9.2 Waiver. All the provisions respecting waiver of rights, obligations and remedies set forth in Section 35.4 of the Agreement are hereby incorporated herein by reference and made a part hereof.

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

9.4 Notices. All notices, authorizations and other communications required under this Lease between TxDOT and Developer shall be given as provided in Section 35.12 of the Agreement.

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

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

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

9.8 Disputes and Governing Law and Venue. All Claims and Disputes arising under this Lease shall be resolved according to Section 29.8 and Article 30 of the Agreement. This Lease shall be governed and construed in accordance with the laws of the State of Texas applicable to contracts executed and to be performed within such State.

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

9.10 Severability. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law. The Parties intend and agree that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, the

dispute resolution body shall supply as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

Signature Page Immediately Follows

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

Developer	**TxDOT**
[●]	**Texas Department of Transportation**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]

EXHIBIT 3B
FORM FOR MEMORANDUM OF LEASE

*** * * * ***

After recording return document to:

_____
_____
_____
Attn: _____

MEMORANDUM OF LEASE

This Memorandum of Lease is entered into and effective as of [●] [*insert the Operating Commencement Date*], by and between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and [●], a [●] limited liability company ("**Developer**").

WITNESSETH

1. TxDOT and Developer have this day entered into a Lease (the "**Lease**") and on [●] TxDOT and Developer entered into a related Comprehensive Development Agreement (State Highway 288 Toll Lanes in Harris County) (the "**Agreement**"). Under the Lease Developer has agreed to, and does hereby, lease from TxDOT, and TxDOT has agreed to, and does hereby, lease to Developer, on the terms and conditions set forth in the Lease, the premises in the County of Harris in the State of Texas legally described in Exhibit A attached hereto and made a part hereof, all for the purpose described in the Lease and Agreement of financing, developing, constructing, operating and maintaining the Project on the Project Right of Way as described and defined in the Lease and Agreement. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement.

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

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

4. The term of the Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of the Lease, as provided in Section 31.10 of the Agreement. The term of this Lease may be extended only as provided in the Agreement.

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

Signature Page Immediately Follows

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

Developer	**TxDOT**
[●]	**Texas Department of Transportation**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]

STATE OF TEXAS)
) ss.
COUNTY OF _____)

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

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

(Personalized Seal) _____
Notary Public's Signature

STATE OF TEXAS)
) ss.
COUNTY OF _____)

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

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

(Personalized Seal) _____
Notary Public's Signature

EXHIBIT 4
PROJECT PLAN OF FINANCE

[TO BE ATTACHED FROM DEVELOPER'S PROPOSAL]

EXHIBIT 5
LIST OF INITIAL FUNDING AGREEMENTS
AND INITIAL SECURITY DOCUMENTS

[TO BE COMPLETED AT FINANCIAL CLOSE]

EXHIBIT 6
REVENUE PAYMENT CALCULATION

Band	**Band 1**		**Band 2**		**Band 3**		**Band 4**		**Band 5**
Revenue Payment (%)	**0.0%**		**12.5%**		**25.0%**		**50.0%**		**75.0%**
Calculation Date	**Floor**	**Ceiling**	**Floor**	**Ceiling**	**Floor**	**Ceiling**	**Floor**	**Ceiling**	**Floor**
1st	$0	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]
2nd	$0	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]
3rd	$0	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]	$[●]
[Etc.]									

[*To be completed based on Developer's Proposal*]

EXHIBIT 7
DEVELOPER'S PROPOSAL SCHEMATICS, PROPOSAL COMMITMENTS, ALTERNATIVE TECHNICAL CONCEPTS AND KEY PERSONNEL

Proposal Schematics

The Proposal Schematic is attached hereto as Attachment 1 to Exhibit 7.

Proposal Commitments

Proposal Section	Proposal Commitment	Affected Provisions of CDA Documents
[To Be Inserted from Developer's Proposal]		

Alternative Technical Concepts

The following Alternative Technical Concepts (ATCs) are hereby incorporated into the Agreement:

[To Be Inserted from Developer's Proposal]

Proposer is responsible for and bears the schedule and cost risk associated with (a) any ATC that would require further environmental evaluation of the Project, (b) obtaining any third party approvals (including Governmental Approvals and Environmental Approvals) required to implement the ATC after award of the Comprehensive Development Agreement, and (c) the acquisition of any additional right of way. Moreover, Proposer is not entitled to a Change Order for time or money as a result of (i) Site Conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way, or (ii) any delay, inability or cost associated with the acquisition of right of way required to implement the ATC.

Identified Key Personnel

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

Name of Key Personnel	Key Personnel Position
[To Be Inserted from Developer's Proposal]	Project Manager
	Financial Manager
	Public Information Coordinator
	Design Manager
	Superintendent or Construction Manager
	Lead Quality Manager
	Environmental Compliance Manager
	Safety Manager
	Operations Manager*
	Maintenance Manager*

* *Operations Manager and Maintenance Manager positions may be combined into single O&M Manager.*

ATTACHMENT 1 TO EXHIBIT 7
PROPOSAL SCHEMATICS

[TO BE ATTACHED FROM DEVELOPER'S PROPOSAL]

EXHIBIT 8
MILESTONE DEADLINES AND PUBLIC FUNDS PAYMENTS

Table 1
Milestone Deadlines

Milestone	Deadline
NTP2 Conditions Deadline	The later of (a) 180 days after the date TxDOT issues NTP1 or (b) 180 days after the date Financial Close occurs
Service Commencement Deadline (Initial Configuration Alternative 1)	1,000 days after TxDOT issues NTP2
Service Commencement Deadline (Initial Configuration Alternative 2)	1,000 days after TxDOT issues NTP2
Service Commencement Deadline (Initial Configuration Alternative 3)	(a) 1,000 days after TxDOT issues NTP2 for the Toll Lanes, the TMC Direct Connector and the BW 8 Direct Connectors and (b) 1,220 days after TxDOT issues NTP2 for the remainder of the Project
Long Stop Date	365 days after the Service Commencement Deadline
Final Acceptance Deadline for each Project Segment	90 days after the Service Commencement Date for the applicable Project Segment

Table 2
Public Funds Payments

(if included in Developer's Proposal)

Public Funds Payment	Payable Not Prior To
[To Be Inserted from Developer's Proposal]	[To Be Inserted from Developer's Proposal]

Table 3
GPLCI Payment: Component A

Component A	Amount
The initial lump-sum, fixed-price amount for the GPLCI Design-Build Contract, which amount is subject to adjustment pursuant to Section 25.1.7(c)	[To Be Inserted from Developer's Proposal]

Table 4
GPLCI Payment: Component B

Component B	Amount
[To Be Inserted from Developer's Proposal]	[To Be Inserted from Developer's Proposal]

Public Funds Payment Terms

1. Applicability

These "Public Funds Payment Terms" apply to the remittance of the TMC Public Funds Payment and the Public Funds Payments set out in Table 2 of this Exhibit 8. In addition, the GPLCI Design-Build Contract shall include substantially similar terms for the payment of any amounts thereunder, subject to any modifications required by TxDOT to conform to then-prevailing payment terms used by TxDOT in its design-build contracts.

The achievement of Financial Close and the issuance of NTP2 are conditions precedent to TxDOT's obligation to remit the TMC Public Funds Payment or any other Public Funds Payment.

2. Draft Payment Request

Developer shall submit a draft payment request to TxDOT and the Independent Engineer every three months (or such other longer frequency as determined by Developer). The draft payment request shall be submitted no earlier than seven days following the end of each such payment period.

Each payment request shall include one hard copy and one electronic copy of the following:

(a) A cover sheet, which shall include (i) the project number and title, (ii) the invoice number (numbered consecutively starting with "1"), (iii) the period covered by the payment request (inclusive calendar days), (iv) the amount of TMC Public Funds Payment and other Public Funds Payments paid theretofore and the amount of this payment request, (v) the maximum amount of Public Funds Payments payable to that point in time, as set out in Table 2 of this Exhibit 8, (vi) the total additional amount remaining to be paid by TxDOT, (vii) authorized signature and title of signatory and (viii) date the payment request was signed;

(b) A listing of the completed Payment Activities, which shall be grouped by WBS and include (i) Payment Activity ID, (ii) Payment Activity description, (iii) Payment Activity value set forth on the Schedule of Values, (iv) total earned based on the Schedule of Values for the payment request period at WBS Level II and (v) total earned based on the Schedule of Values for the Project to date;

(c) The corresponding progress reports for the period covered by the payment request;

(d) A certificate in the form set out as Attachment 1 to this Exhibit 8, with no additions or deletions other than those approved by TxDOT; and

(e) Supporting documents, to be identified by TxDOT prior to the submission of the first payment request.

The maximum amount of any payment request may not exceed the greater of (x) the cumulative amount of Public Funds Payments to be paid through and including the date of the payment request, as set out in

Table 2 of this Exhibit 8, less all Public Funds Payments previously paid and (y) the total amount of Payment Activities completed through and including the date of the payment request. Partially completed Payment Activities are not eligible for payment.

3. Payment Request and Progress Status Meeting

Developer shall schedule and hold meetings with TxDOT and the Independent Engineer to review the payment request and progress status within seven days after Developer submits the draft payment request to TxDOT. The meetings shall address (a) actual activity start dates, finish dates and forecast dates, (b) total earned based on the Schedule of Values for the payment request period and for the Project to date, (c) incorporation of and summary list of all approved Change Orders, (d) Critical Path(s) and analysis of potential performance areas and (e) written summary of actions that are either in consideration or are being taken to minimize areas of potential impact or concerns.

Upon approval of the draft payment request by TxDOT, TxDOT and Developer shall sign the draft payment request to indicate that it has been approved.

4. Payment Request and Remittance of Payment

Developer shall submit each payment request promptly after the draft payment request is approved by TxDOT.

Within 30 days after TxDOT receives a complete, approved payment request that is compliant with the requirements of this Agreement, TxDOT will remit to Developer the amount of the payment request, less any amounts owing by Developer to TxDOT; *provided* that if, at such time, there exists any Developer Default that remains uncured, TxDOT may delay and withhold such payment until such Developer Default is fully and completely cured.

5. Payment to Design-Build Contractor

Within 10 days after receipt of payment from TxDOT, Developer shall pay the Design-Build Contractor our of the amount paid to Developer the amount to which the Design-Build Contractor is entitled under its contract with Developer. In Developer's contract with the Design-Build Contractor, Developer shall require the Design-Build Contractor to make payment to its subcontractors and suppliers in a similar manner. TxDOT has no obligation to pay, or to see to the payment of, money to the Design-Build Contractor or its subcontractors or suppliers, except as may otherwise be required by Law.

6. No Waiver

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

7. Disputes

Failure by TxDOT to pay any amount in dispute shall no alleviate, diminish or modify in any respect Developer's obligation to perform under the CDA Documents and Developer shall not cease or slow down its performance under the CDA Documents on account of any such amount. Any dispute regarding such payment shall be resolved pursuant to the Dispute Resolution Procedures.

EXHIBIT 9
PRELIMINARY PROJECT BASELINE SCHEDULE

[TO BE ATTACHED FROM DEVELOPER'S PROPOSAL]

EXHIBIT 10
TOLL REGULATION

1. Definitions. Capitalized terms used but not defined in this Exhibit 10 have the meanings ascribed to them in Exhibit 1 to the Agreement. Unless otherwise specified, wherever the following abbreviations or terms are used in the Agreement (including this Exhibit 10) or the Technical Provisions, they have the meanings set forth below:

"**Administrative Fees**" means those fees permitted to be charged pursuant to, and subject to, Section 11.

"**Average of Average Speeds**" has the meaning set forth in Section 9(a).

"**Average Speed**" has the meaning set forth in Section 9(a).

"**Average Volume**" has the meaning set forth in Section 9(a).

"**Base Toll**" means the toll amount for a Toll Segment determined pursuant to Section 6 or Section 7, as applicable, before being multiplied by the Class Factor of the User and before addition of the Image-Based Billing Toll Premium (if any).

"**Base Toll Rate Soft Cap**" equals (a) for any Toll Segment that is not a Direct Connector, $0.75 per mile (Escalated Annually – GSP) or (b) for any Toll Segment that is a Direct Connector, $1.50 per Toll Segment (Escalated Annually – GSP).

"**Base Toll Soft Cap**" for a Toll Segment equals (a) the Base Toll Rate Soft Cap *multiplied by* (b) the actual length (in miles) of such Toll Segment, rounded to the nearest one-cent.

"**Class Factor**" means the factors for each User Classification set out in Table 1.

"Corridor Tolling Policy" means the policy for SH 288 adopted by the committee convened pursuant to Section 228.013 of the Texas Transportation Code.

"**Demand Factor**" means the applicable factor under Table 4.

"**Direct Connector**" (**DC**) means a ramp connecting another highway or other road (other than SH 288) directly to the Toll Lanes.

"**Dynamic Mode**" means operation of the Toll Lanes using the pricing methodology set forth in Section 7.

"**Escalated Annually – CPI**" means, with respect to any amount, that such amount shall be increased as of January 1, 2013 and again as of January 1 of each calendar year thereafter by the greater of (i) 2% or (ii) the percentage increase in CPI between CPI for October of the second immediately preceding year and CPI for October of the immediately preceding year.

"**Escalated Annually – GSP**" means, with respect to any amount, that such amount shall be increased as of January 1, 2013 and again as of January 1 of each calendar year thereafter by the greater of (i) 3% or (ii) the percentage increase in GSP Per Capita between GSP Per Capita for the third immediately preceding year and GSP Per Capita for the second immediately preceding year. For clarity, the Bureau of Economic Analysis releases the GSP data for a year in the middle of the following year;

therefore, by way of example, the adjustment that would be made as of January 1, 2013 would the increase in GSP Per Capita between the GSP Per Capita for 2010 (released in mid-2011) and the GSP Per Capita for 2011 (released in mid-2012).

"**Exempt Vehicle**" means any (a) authorized emergency vehicle as defined in Section 541.201 of the Texas Transportation Code; (b) marked, recognizable military vehicle; (c) vehicle of TxDOT contractors working on the construction, improvement, maintenance or operation of the Project; (d) recognized public agency bus (including any public school bus); (e) vehicle with qualifying veteran license plate (as provided under Minute Order 113682 of the Commission, as the same may be amended or supplemented from time to time); (f) at Developer's election, vehicle registered to Developer, its Contractors or their respective employees and used solely or primarily for on-site Construction Work or on-site O&M Work; and (g) subject to the provisions of the Agreement with respect to Discriminatory Changes in Law, any other class of vehicles for which applicable Law provides free, non-toll passage on the Toll Lanes.

"**Gross State Product**" (**GSP**) means the Nominal Gross Domestic Product by State for the State of Texas, as published by the United States Department of Commerce, Bureau of Economic Analysis, or if such publication ceases to exist a comparable publication selected by TxDOT and approved by Developer. If such publication is revised from that set forth above, the GSP shall be converted in accordance with the conversion factor published by the Bureau of Economic Analysis. If the Bureau of Economic Analysis otherwise alters its method of calculating such publication, the Parties shall mutually determine appropriate adjustments in the affected publication.

"**GSP Per Capita**" means the quotient equal to (a) GSP *divided by* (b) the most recently published annual estimate of the population for the State of Texas, as published by the United States Department of Commerce, Bureau of Economic Analysis.

"**Holiday**" means any (a) "national holiday" listed in Section 662.003(a) of the Texas Government Code and (b) any other day approved by TxDOT in which a special event is scheduled to occur in the vicinity of the Project that Developer expects will cause a material change in typical traffic volume.

"**Image-Based Billing**" means, if any when Image-Based Billing is allowed pursuant to Section 10(a), operation of the Toll Lanes in a manner that promotes or accommodates Video Transactions by Users that will not be treated or processed as Violations (unless and until the User fails to pay the associated invoice for the Video Transaction), including "pay-by-mail" and similar programs.

"**Image-Based Billing Toll Premium**" means the additional toll amount permitted to be charged to Users for a Video Transaction billed through Image-Based Billing (such as "pay-by-mail") pursuant to Section 10(b) (if and when Image-Based Billing is allowed pursuant to Section 10(a)).

"**Minimum Base Toll**" for a Toll Segment equals the greater of (a) $0.35 (Escalated Annually – CPI) and (b) the product of (i) the Minimum Base Toll Rate *multiplied by* (ii) the actual length (in miles) of such Toll Segment, rounded to the nearest one-cent.

"**Minimum Base Toll Rate**" equals $0.06 per mile (Escalated Annually – CPI).

"**Passenger Car Equivalents per Hour**" **(PCE/H)** means the number of passenger car equivalents per hour as calculated pursuant to the most current version of the TRB Highway Capacity Manual (which method accounts for the effects of buses and trucks on operations).

"**Target Speed**" means the slower of (a) 45 MPH or (b) the speed equal to 15 MPH slower than the posted speed limit.

"**Time-of-Day Mode**" means operation of the Toll Lanes using the pricing methodology set forth in Section 6.

"**Toll Information Sign**" has the meaning set forth in Section 4(a)(i).

"**Toll Lanes**" means the Limited Access Highway lanes with respect to the Project as delineated in Section 1 of the Technical Provisions, in conformance with applicable Law.

"**Toll Segment**" has the meaning set forth in Section 3.

"**Toll Transaction**" means an electronic record of a toll and a related set of contemporaneous video images are properly transmitted to a CSC Host respecting a vehicle that passes through a tolling gantry on a Toll Lane on the Project, including a Transponder Transaction or a Video Transaction. Whether a Toll Transaction is a Transponder Transaction or a Video Transaction will be determined by the CSC Host based on the disposition of the Toll Transaction at the time of the settlement of funds for the Toll Transaction.

"**Transponder Issuer**" means any Person, including TxDOT, HCTRA and NTTA, who or which (a) issues transponders for mounting in vehicles and transacting Transponder Transactions on tolled roadways in the State or in any other state of the United States, (b) participates with TxDOT in interoperability protocols, agreements and arrangements, and (c) under such interoperability protocols, agreements and arrangements, covenants to remit payments to the other participants of all Toll Transactions that meet the terms for transmission, debiting and payment, and are required to be included in the current payment cycle, as set forth in such protocols, agreements and arrangements.

"**Transponder Transaction**" means a Toll Transaction respecting a vehicle that is equipped with a valid (i.e., not suspended or reported as lost or stolen), properly mounted, readable and working transponder issued by a Transponder Issuer that is associated with an account that is open (i.e., not suspended or closed) and has a sufficient account balance at the time of debit or re-debit to pay in full the applicable toll.

"**User Classification**" means each classification of vehicles set out in Table 1.

"**Vehicle Speed**" has the meaning set forth in Section 9(a).

"**Vehicle Volume**" has the meaning set forth in Section 9(a).

"**Video Transaction**" means a Toll Transaction respecting a vehicle does not qualify as a Transponder Transaction, regardless of whether the Toll Transaction results in a Violation or Image-Based Billing.

"**Violation**" means (a) until Image-Based Billing is allowed for use of the Toll Lanes, a Video Transaction that the tolling services provider could not post to and receive payment from a pre-paid account pre-established by or for the User for the purpose of paying tolls and (b) if and when Image-Based Billing is allowed for use of the Toll Lanes, a Video Transaction that remains unpaid after the tolling services provider has taken all required steps under applicable Law to notify the User of the amount due and the consequences of non-payment.

"**Violation Fee**" means the Administrative Fee charged for Violations.

2. User Classifications; Class Factors. The User Classifications for this Project, together with the Class Factor for each User Classification, are set out in Table 1. The User Classifications may not be changed except with TxDOT's prior approval. To be consistent with classifications used on other toll facilities in the region, User Classifications (other than for Exempt Vehicles) are based on axles, not shape.

Table 1

User Classification	Class Factor
Exempt Vehicles	0.0
Vehicles with 2 axles (including motorcycles without trailers)	1.0
Vehicles with 3 axles (including motorcycles with single-axle trailers)	2.0
Vehicles with 4 axles	3.0
Vehicles with 5 axles	4.0
Vehicles with 6 or more axles	5.0

3. Toll Segments

(a) The Toll Lanes are divided into segments measured between defined points (each such segment, a "**Toll Segment**"). The length of each Toll Segment is measured along the centerline of the Toll Lanes and does not incorporate entrance and exit ramp lengths. The Toll Segments for the Toll Lanes are provided in Table 2 and depicted in Figure 1 and Figure 2. Notwithstanding anything to the contrary herein, each Toll Segment shall be deemed to consist of only those Project Segments (or portions of Project Segments) within the Toll Segment that have achieved Service Commencement. Developer shall not modify the Toll Segments unless and until Developer submits justification for the proposed modification to TxDOT and the proposed modification is approved by TxDOT, in TxDOT's discretion, before implementation.

(b) Tolls will be collected and Toll Transactions will be transmitted to the CSC Host according to the screen-line principle, in which Users are assessed a toll whenever they pass a toll gantry, regardless of the distance traveled on the Toll Lanes. Unless otherwise approved by TxDOT in its discretion, Tolls will not be assessed or collected using "trip-generation" or "transaction bundling" by which Users are assessed a bundled toll for the aggregate distance travelled by the User over multiple Toll Segments.

Table 2

Toll Segment	Description	Point (STA)	Point (STA)	Length (mi.)
Segment 1NB	North (Reed Road to Binz Street)	--	--	--
Segment 2NB	South (Beltway 8 South to Reed Road)	--	--	--
Segment 1SB	North (Binz Street to Reed Road)	--	--	--
Segment 2SB	South (Reed Road to Beltway 8 South)	--	--	--
Segment 3	DCs Northbound North (Beltway 8 to Reed Road)	--	--	--
Segment 4	DCs Northbound South (County Line to Beltway 8)	--	--	--
Segment 5	DCs Southbound North (Reed Road to Beltway 8)	--	--	--
Segment 6	DCs Southbound South (Beltway 8 to County Line)	--	--	--
Note: The precise station points and segment lengths will be determined by Developer (consistent with the general descriptions included in this Exhibit 10) as part of the Design Documents.				

Figure 1

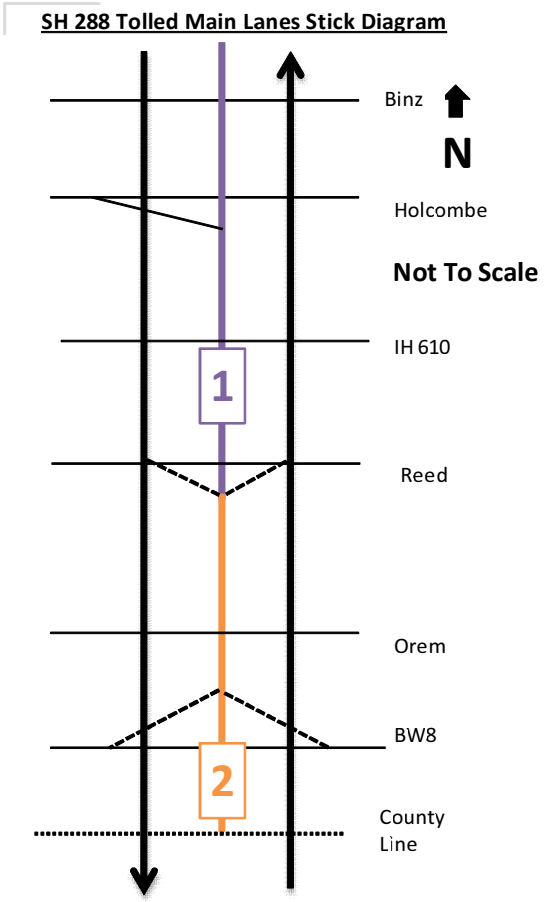
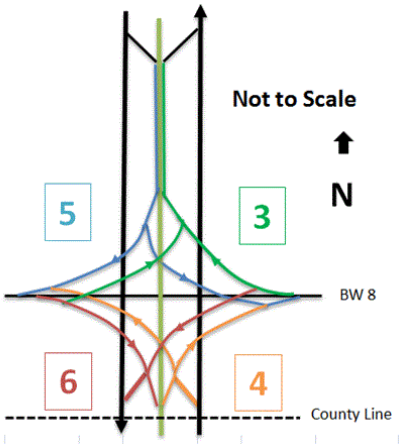


Figure 2



4. Public Information

(a) Signage; Effectiveness of Changes in the Base Toll

(i) For and near each Toll Lane entry decision point, Developer shall provide and operate one or more signs ("**Toll Information Signs**") using a combination of variable LED-based displays and static sign panels. Each Toll Information Sign shall, at a minimum, display (1) the sum of tolls for the two-axle User Classification for the trip from the point of entry to the first point at which the User is able to exit the toll lanes without incurring a second toll, (2) the sum of tolls for the two-axle User Classification for the trip from the point of entry to the end of the toll lanes, (3) a legible disclaimer notifying Users that vehicles with more than two axles will be charged more than the two-axle toll, and (4) if Image-Based Billing is allowed, the amount of the Image-Based Billing Toll Premium. The Toll Information Signs shall meet the requirements of the latest Manual on Uniform Traffic Control Devices (MUTCD) and TxDOT MUTCD standards applicable to toll facilities in the State with respect to signage. Any Toll Information Sign to be installed in the right-of-way owned by a third party (e.g., HCTRA or Brazoria County) shall comply with such third party's signing requirements. The Toll Information Signs shall be installed and operated in locations and a manner that provides sufficient time for a User to decide whether or not to enter the Toll Lanes. Because a User's trip may include travel on both the Toll Lanes and the SH 288 toll lanes in Brazoria County, Developer shall establish and maintain an interface with Brazoria County's toll system for the mutual exchange of toll rate information so that Toll Information Signs installed and operated by both parties will display proper toll rate amounts for Users.

(ii) The Toll Information Signs shall change at the precise time that a change is scheduled to go into effect (e.g., at the start of each half-hour period when in Time-of-Day Mode). However, the effectiveness of any increase in the Base Toll for a Toll Segment shall be delayed by the minimum configurable period of time it takes, under the then-prevailing traffic conditions, for a User to travel from the respective Toll Information Sign to the toll gantry(ies), so that a User who enters the Toll Lane is never charged more than the toll amount indicated on the Toll Information Sign immediately before the User entered (as required by Section 6(b) and Section 7(c)), regardless of a change that would otherwise take effect while the User is en route to the toll gantry(ies). Developer shall submit information to TxDOT to demonstrate its compliance with the foregoing delay in effectiveness, which shall be subject to TxDOT's approval before implementation. Any decrease in the Base Toll for a Toll Segment shall take effect immediately, at the same time as the Toll information Signs are changed.

(b) **Publication of Toll Information During Time-of-Day Mode.** Beginning 120 days before the first Service Commencement Date and so long as the Toll Lanes are operated in Time-of-Day Mode, Developer shall publish and keep current a schedule of tolls for each Toll Segment and each User Classification in the format depicted in Table 3, together with information about any Holidays (including a schedule of tolls for each Toll Segment and each User Classification in a format substantially the same as depicted in Table 3 for each Holiday), temporary discounts, Class Factors, any Image-Based Billing Toll Premiums, and any Administrative Fees, on an Internet website for general public viewing (i.e., non-passcode). Notice of changes to the schedule of tolls shall be posted to such website 30 days prior to the effectiveness of such change (except that during the first 90 days after Service Commencement, when the Base Toll may be changed weekly, changes shall be posted to such website two days prior to the effectiveness of such change). In addition, Developer shall make such information available (1) by telephone, (2) upon request at Developer's offices during reasonable business hours, (3) upon request by facsimile copy without charge or (4) upon request by mailing a copy if the request is accompanied by a self-addressed stamped envelope.

Table 3

Toll Segment: _____							
User Classification: _____							
Payment Type: _____							
	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
12:00 AM							
12:30 AM							
1:00 AM							
1:30 AM							
2:00 AM							
2:30 AM							
3:00 AM							
3:30 AM							
4:00 AM							
4:30 AM							
5:00 AM							
5:30 AM							
6:00 AM							
6:30 AM							
7:00 AM							
7:30 AM							
8:00 AM							
8:30 AM							
9:00 AM							
9:30 AM							
10:00 AM							
10:30 AM							
11:00 AM							
11:30 AM							
12:00 PM							
12:30 PM							
1:00 PM							
1:30 PM							
2:00 PM							
2:30 PM							
3:00 PM							
3:30 PM							
4:00 PM							
4:30 PM							
5:00 PM							
5:30 PM							
6:00 PM							
6:30 PM							
7:00 PM							
7:30 PM							
8:00 PM							
8:30 PM							
9:00 PM							
9:30 PM							
10:00 PM							
10:30 PM							
11:00 PM							
11:30 PM							

(c) **Publication of Toll Information During Dynamic Mode.** Whenever the Toll Lanes are operated in Dynamic Mode, Developer shall maintain and keep current on an Internet website for general public viewing (i.e., non-passcode) information about how tolls are determined, any temporary discounts, Class Factors, any Image-Based Billing Toll Premiums, and any Administrative Fees, as well as information required to be published on such website by Section 7(b). Such website shall be dynamic and display, in real time, the then-current toll information displayed on the Toll Information Signs at the various locations on the Toll Lanes.

5. Discounts. If Developer desires to establish or cancel a temporary discount with respect to any toll, Developer shall give notice of the establishment or cancellation to TxDOT at least 30 days' prior to implementation or withdrawal thereof. If the TxDOT Tolling Services Agreement is in effect, any discount is subject to prior approval by TxDOT in TxDOT's discretion (which approval may be

conditioned on the payment of additional service fees) to the extent such discount would require TxDOT, in its capacity as a service provider under the TxDOT Tolling Services Agreement, to undertake additional or different steps or processes to implement the discount.

6. Determination of Tolls During Time-of-Day Mode

(a) **Applicability.** This Section 6 shall apply at all times during the Term except when Section 7 (Dynamic Mode) applies.

(b) **Calculation of Toll.** The toll for a Toll Segment for a User Classification shall equal the product of (i) the Base Toll for such Toll Segment during the applicable day or Holiday and time *multiplied by* (ii) the published Class Factor for such User Classification, rounded to the nearest one-cent. Notwithstanding anything herein to the contrary, under no circumstances shall a User be charged more than the lowest of (1) a toll based on the latest published effective toll schedules, (2) a toll based on the latest published temporary discounts (if any) or (3) a toll based on what is last displayed to the User on the Toll Information Sign immediately before the User enters the toll lanes. Because a User's trip may include travel on both the Toll Lanes and the SH 288 toll lanes in Brazoria County, Developer shall establish and maintain an interface with Brazoria County's toll system for the mutual exchange of toll rate information so that Toll Information Signs installed and operated by both parties will display proper toll rate amounts for Users.

(c) **Initial Base Tolls (at Service Commencement).** Developer shall determine the initial Base Toll as of Service Commencement for each Toll Segment for each half-hour of each day of the week and each Holiday. Not later than 180 days before the first Service Commencement Date, Developer shall submit to TxDOT for review and comment (i) the schedule of initial Base Tolls, (ii) the then-applicable Minimum Base Toll and Base Toll Soft Cap, (iii) any temporary discounts to be offered and (iv) the lengths of each Toll Segment.

(d) **Changes to the Base Tolls.** Subject to Sections 6(e) and (f), Developer may increase or decrease the Base Tolls in its discretion (i) once per week during the first 90 days after Service Commencement and (ii) thereafter, as of the first day of each month.

(e) **Minimum and Base Toll Soft Caps.** The Base Tolls (i) shall be not less than the Minimum Base Toll and (ii) except as provided in Section 6(f), shall be not more than the Base Toll Soft Cap.

(f) **Exceeding Base Toll Soft Caps.** Developer may increase the Base Tolls (at the times provided in Section 6(d)) in excess of the Base Toll Soft Cap for any particular Toll Segment or Toll Segments and for any particular 30 minute time period or time periods, in order to maintain travel speeds of at least the Target Speed in the Toll Lanes, subject to the requirements set forth in this Section 6(f).

(i) Developer shall submit a request to exceed the Base Toll Soft Cap to TxDOT at least 10 Business Days before the proposed increase would take effect. Such a request shall include the following information to support the request: (1) identification of the Toll Segment and time period (including day of week and specific half hour) under review; (2) traffic volume reports showing average traffic volume in excess of 3,300 PCE/HR and average speed below the Target Speed on the Toll Segment and during the time period under review for five days during any period of 10 consecutive days, *provided* that no extraordinary circumstance (such as accidents, rehabilitations, special public events, etc.) occurred during that period; (3) the proposed Base Toll for the such Toll Segment and time period that exceeds the Base Toll Soft Cap multiplied by the Demand Factor for the average traffic volume (as demonstrated in clause (2) above); and (4) the date on which the increase will take effect.

(ii) TxDOT will verify that maintenance of travel speeds supports the proposed increase based on the information submitted under Section 6(f)(i) within 10 Business Days after receipt such request and all supporting information. Developer's ability to exceed the Base Toll Soft Cap shall be limited only to the specific Toll Segment and time period identified in its request and supported by the information submitted therewith. TxDOT may disallow the proposed increase if Developer fails to submit all required information or if the information submitted does not support the requested increase (based on the criteria set out in Section 6(f)(i) and Table 4).

(iii) Once the Base Toll Soft Cap is exceeded for a particular Toll Segment and time period, and until the Base Toll is again at or below the Base Toll Soft Cap, Developer shall submit to TxDOT traffic volume reports on a monthly basis for such Toll Segment and time period with the following information: (1) identification of the Toll Segment and time period (including day of week and specific half hour) under review; (2) the (increased) Base Toll for the subject Toll Segment and time period; (3) traffic volume reports showing traffic volumes on the Toll Segment and during the time period under review for the previous 10 consecutive days; (4) identification of the applicable Demand Factor for the average traffic volume during the such 10-day period and (5) the maximum Base Toll permitted under Section 6(f)(i)(2), as calculated using the most recent Demand Factor ascertained under clause (4) above. If the most recent Demand Factor ascertained under clause (4) above is less than 1.0, then Developer shall decrease the Base Toll at the next opportunity to change the Base Toll (pursuant to Section 6(d)(ii)) to an amount that does not exceed the Base Toll amount for the prior month multiplied by such Demand Factor.

(iv) At either Party's request, TxDOT and Developer shall review Table 4 from time to time during the Operating Period to determine if the Demand Factors are adequate for managing traffic to the Target Speed. Developer may revise Table 4 with TxDOT's prior approval.

Table 4

Traffic Conditions		**Demand Factor**
Five of the previous 10 Average Volumes in the Toll Segment (for both Toll Lanes in the same direction) are each:		
Equal to or greater than:	And less than:	
3,500 PCE/H	--	1.25
3,450 PCE/H	3,500 PCE/H	1.20
3,400 PCE/H	3,450 PCE/H	1.15
3,350 PCE/H	3,400 PCE/H	1.10
3,300 PCE/H	3,350 PCE/H	1.05
2,500 PCE/H	3,300 PCE/H	1.00
2,450 PCE/H	2,500 PCE/H	0.95
2,400 PCE/H	2,450 PCE/H	0.90
2,350 PCE/H	2,400 PCE/H	0.85
2,300 PCE/H	2,350 PCE/H	0.80
--	2,300 PCE/H	0.75

7. Determination of Tolls During Dynamic Mode

(a) **Applicability.** The Parties acknowledge that the Corridor Tolling Policy for SH 288 adopted by the committee convened pursuant to Section 228.013 of the Texas Transportation Code requires the use of time of day pricing, consistent with Time-of-Day Mode set out in Section 6. If such Corridor Tolling Policy is amended so as to permit Dynamic Mode and Dynamic Mode is otherwise permitted by applicable Law, or if applicable Law is amended so as to otherwise permit Dynamic Mode notwithstanding the Corridor Tolling Policy, then either (i) Developer may operate the Toll Lanes in Dynamic Mode upon prior notice to and approval by TxDOT or (ii) TxDOT may require Developer to

operate the Toll Lanes in Dynamic Mode (without Developer having requested to do so) if dynamic toll pricing is generally used in toll facilities in the region of the Project. In determining whether to approve a request by Developer to operate in Dynamic Mode pursuant to clause (i) above, TxDOT may consider the extent to which Dynamic Mode is consistent with any agreement between TxDOT and Brazoria County, the Brazoria County Toll Road Authority or other parties pertaining to SH 288, and TxDOT's approval may be conditioned upon further commitments or agreements by Developer to comply with any such agreement.

(b) **Measurements and Reporting.** Developer shall measure and report indicative Average Speeds (which may include historical or other relevant information) for a minimum of the previous 180 days (or such lesser period if less than 180 days of Dynamic Mode have elapsed), broken out by Toll Segment during every half hour period, or as otherwise approved by TxDOT, and the applicable Toll Segment lengths, Class Factors, and Image-Based Billing Toll Premiums. Developer shall make this information publicly available on an Internet website, by telephone request, upon request at Developer's offices during reasonable business hours, by facsimile copy without charge or by mailing a copy if the request is accompanied by a self-addressed stamped envelope.

(c) **Calculation of Toll.** The toll for a Toll Segment for a User Classification shall equal the product of (i) the applicable Base Toll for such Toll Segment at such time *multiplied by* (ii) the published Class Factor for such User Classification, rounded to the nearest one-cent. Notwithstanding anything herein to the contrary, under no circumstances shall a User be charged more than the lowest of (1) a toll based on the latest published temporary discounts (if any) or (2) a toll based on what is last displayed to the User on the Toll Information Sign immediately before the User enters the toll lanes. Because a User's trip may include travel on both the Toll Lanes and the SH 288 toll lanes in Brazoria County, Developer shall establish and maintain an interface with Brazoria County's toll system for the mutual exchange of toll rate information so that Toll Information Signs installed and operated by both parties will display the proper toll rate amounts for Users.

(d) **Base Tolls.** The Base Toll for every Toll Segment shall be determined periodically, but not more frequently than once during a five-minute period, to maintain traffic at or above the Target Speed. The Base Toll for a Toll Segment shall equal the greater of (i) the Minimum Base Toll and (ii) the product of (1) the Base Toll last determined for such Toll Segment *multiplied by* (2) the Demand Factor as of the time of the determination of the new Base Toll; *provided* that if the amount so determined is less than the Base Toll Soft Cap, Developer may determine the Base Toll to be any amount not less than the Minimum Base Toll and not more than the Base Toll Soft Cap.

(e) **Demand Factor.** The Demand Factor shall be determined pursuant to Table 4. At either Party's request, TxDOT and Developer shall review Table 4 from time to time during the Operating Period to determine if the Demand Factors are adequate for managing traffic to the Target Speed. Developer may revise Table 4 with TxDOT's prior approval.

8. Target Speed

(a) **Time-of-Day Mode.** From and after the 91st day after Service Commencement, and so long as the Toll Lanes are operated in Time-of-Day Mode, Developer shall set and increase tolls within the parameters of this Exhibit 10 with the intent of causing the Average Speed of travel in every Toll Lane of every Toll Segment (other than Direct Connectors) to be equal to or greater than the Target Speed at all times.

(b) **Dynamic Mode.** Whenever the Toll Lanes are operated in Dynamic Mode, Developer shall cause the Average Speed of travel in every Toll Lane of every Toll Segment (other than Direct Connectors) to be equal to or greater than the Target Speed at all times, subject only to Section 8(c).

(c) **Performance Excused.** Developer shall be excused from its obligation under Sections 8(a) and (b) if its failure is caused by events that are beyond Developer's control, which events are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval by Developer or any Developer-Related Entity, and Developer provides TxDOT with adequate evidence thereof. Examples of events that are beyond Developer's control include:

(i) An Incident (beyond the control of any Developer-Related Entity) within the Toll Lanes or General Purpose Lanes to which Developer responds by instituting measures to clear the Incident and return the lane to availability as required by the CDA Documents and the Incident Management Plan, for which documentation of corrective action include ITS still photos and video with time stamps, Courtesy Patrol/Motorist Assistance or Operations Manager records, and auditable data records provided from automated ITS dispatch records;

(ii) An Incident (beyond the control of any Developer-Related Entity) within the Toll Lanes or General Purpose Lanes to which authorized emergency vehicles (as defined in Section 541.201 of the Code) respond, for which documentation of corrective action include official police reports showing dates and times dispatched, time arrived, and time cleared;

(iii) Incidents or recurring congestion (beyond the control of any Developer-Related Entity) adjacent to the Toll Lanes, for which documentation of corrective action include ITS still photos and video with time/date stamps;

(iv) Severe or inclement weather, for which documentation of corrective action include ITS still photos and video with time/date stamps and weather radar snapshots with time/date stamps and vehicle volumes;

(v) TxDOT suspends tolling under Article 14 of the Agreement; and

(vi) Heavy traffic congestion (for reasons otherwise beyond Developer's control or the circumstances described in clauses (i)-(v) above) despite tolls set at the maximum amount allowed by Section 6 or 7, as applicable.

9. Measurements and Reporting

(a) **Measurements.** For each Toll Lane of each Toll Segment, from and after the Service Commencement Date thereof, Developer (i) shall measure and record the speed of every vehicle at points no greater than half-mile spacing ("**Vehicle Speed**"), (ii) shall calculate the average Vehicle Speed for each 60-second period ("**Average Speeds**"), (iii) shall calculate the average of the Average Speeds for every consecutive 15-minute period, beginning at the top of the hour ("**Average of the Average Speeds**"), (iv) measure and record every vehicle at points no greater than half-mile spacing ("**Vehicle Volume**") and (v) shall calculate the average Vehicle Volume for each 60-second period ("**Average Volumes**"). Developer shall retain all raw and reduced data for a minimum of five years to facilitate periodic auditing.

(b) **Weekly Report of Sub-Target Speeds.** For each Toll Segment, from and after the Service Commencement Date thereof, Developer shall prepare and deliver to TxDOT and the

Independent Engineer a weekly report summarizing (i) the Average Speed during any time period during which the Average Speed for the Toll Segment was below the Target Speed (e.g., "Tuesday, 10:14 a.m. to 10:40 a.m. — Toll Segment 1N — Average Speed of 38 MPH), (ii) the reason the Average Speed was below the Target Speed (e.g., "Incident in Toll Lane — Stalled Car") and (iii) any corrective action taken to increase the Average Speed (e.g., "Responded to incident and instituted lane recovery procedures within response parameters").

(c) **Monthly Reports.** For each Toll Segment, from and after the Service Commencement Date thereof, Developer shall prepare and deliver to TxDOT and the Independent Engineer a monthly report (in electronic format, including all raw data capable of being reviewed) describing (i) Vehicle Speed and Vehicle Volume for each Toll Lane in the Toll Segment, (ii) Average Speeds and Average Volumes (PCE/h) for each Toll Lane in the Toll Segment, (iii) Average of the Average Speeds for each Toll Lane in the Toll Segment and (iv) tolling data, including User Classification, Base Toll, Toll Segment length, Base Toll Rates, Toll Segment Toll and temporary discounts (if any) for each tolling point in the Toll Segment.

(d) **Historical Toll Rate Reporting.** Developer shall capture and store the complete history of all calculated toll rates. Developer shall establish and make available to TxDOT and any TxDOT-authorized user, a secure (i.e. password-protected) Internet-based toll rate reporting interface and functionality that permits TxDOT and any TxDOT-authorized user to research historical toll rate information when reviewing customer disputes related to toll rate charges.

10. Violations; Image-Based Billing; Toll Premiums

(a) **Violations; Image-Based Billing.** Developer may not promote or use Image-Based Billing unless and until TxDOT notifies Developer that Image-Based Billing will be allowed on the Toll Lanes. TxDOT will determine whether to allow Image-Based Billing on the Toll Lanes based on whether comparable policies have been implemented on other toll facilities in the region of the Project; *provided* that if there occurs[a Compensation Event described under clause (u) of the definition of "Compensation Event"], TxDOT shall allow Image-Based Billing on the Toll Lanes. Until TxDOT makes such determination and provides such notice to Developer, Video Transactions will be treated as Violations.

(b) **Image-Based Billing Toll Premiums.** The following provisions apply if TxDOT has notified Developer pursuant to Section 10(a) that Image-Based Billing is allowed on the Toll Lanes:

(i) **Right to Charge Image-Based Billing Toll Premiums.** In addition to the right to charge tolls, Developer shall have the right to charge an Image-Based Billing Toll Premium for each Video Transaction subject to and in accordance with this Section 10. The foregoing notwithstanding, Developer may not charge an Image-Based Billing Toll Premium for use of the Toll Lanes by an Exempt Vehicle or by any vehicle during any time that tolling has been suspended under Article 14 of the Agreement. For the avoidance of doubt, while the TxDOT Tolling Services Agreement is in effect, the Image-Based Billing Toll Premium shall be collected by TxDOT on behalf of Developer in accordance therewith, and the payment of proceeds thereof to TxDOT or Developer shall be as set forth in the TSA.

(ii) **Amount of Image-Based Billing Toll Premiums.** The amount of any Image-Based Billing Toll Premium shall be determined by TxDOT and shall be consistent with similar premium amounts charged for such tolls on other toll facilities operated by TxDOT, but shall be not more than an amount that is reasonably necessary for Developer to recover Developer's reasonable out-of-pocket and documented costs and expenses for processing a Video Transaction (whether directly or through TxDOT under the TxDOT Tolling Services Agreement) (in excess of costs and expenses for processing a Transponder Transaction), including a reasonable and documented amount to compensate Developer for

the risk of collection, but no other risk. The amount of an Image-Based Billing Toll Premium may not include costs recouped by Developer through other revenues, including through a similar premium charged by TxDOT and remitted to Developer under the TxDOT Tolling Services Agreement (if any). The amount of an Image-Based Billing Toll Premium may not violate or cause TxDOT to violate any agreement between TxDOT and Brazoria County, the Brazoria County Toll Road Authority or other parties pertaining to SH 288. The amount of an Image-Based Billing Toll Premium may be changed by TxDOT as of September 1 of each year.

(c) **Potential Transponder Transactions**

(i) **Lists of Valid Transponders.** Developer shall regularly seek and receive consolidated lists of valid transponders of Transponder Issuers.

(ii) **Transponder with Insufficient Balance.** If a User with a valid and identifiable transponder issued by a Transponder Issuer uses the Toll Lanes, but the Transponder Transaction is rejected due to insufficient funds in the User's account, and if the CSC Host supports re-submission, Developer shall resubmit (or cause the Transponder Issuer to resubmit) the Transponder Transaction once per day until the Violation notice is issued to the User. Developer may not charge an Image-Based Billing Toll Premium to such User if Developer is successful in collecting the Transponder Transaction toll prior to issuing the Violation notice.

11. Administrative Fees

(a) **While the TxDOT Tolling Services Agreement Is in Effect.** This Section 11(a) applies so long as the TxDOT Tolling Services Agreement remains in effect.

(i) **Generally.** While the TxDOT Tolling Services Agreement is in effect, TxDOT has the right to establish and charge Administrative Fees to recover reasonable out-of-pocket and documented costs and expenses incurred with respect to its work under the TxDOT Tolling Services Agreement to the extent not compensated under the TxDOT Tolling Services Agreement.

(ii) **Violation Fee.** Any Violation Fees will be charged by TxDOT pursuant to the terms of the TxDOT Tolling Services Agreement.

(b) **If the TxDOT Tolling Services Agreement Is Not in Effect.** This Section 11(b) applies if, and only if, the TxDOT Tolling Services Agreement is no longer in effect.

(i) **Generally.** In addition to the right to charge tolls, Developer shall have the right to charge Administrative Fees subject to and in accordance with this Section 11(b).

(ii) **Amount.** The amount of any Administrative Fee shall be not more than an amount that is reasonably necessary to recover reasonable out-of-pocket and documented costs and expenses incurred in the processing and collection of Toll Transactions (except that the amount of Administrative Fees described in clauses (iv) and (v) below are subject to the provisions thereof).

(iii) **Notice and Publication.** If the TxDOT Tolling Services Agreement is not in effect, Developer shall notify TxDOT of its intent to commence charging or to change the amount of any Administrative Fees at least 15 days prior to the effectiveness thereof. Concurrent with such notice, Developer shall also provide TxDOT, for TxDOT's review and comment, with a documentation establishing that the amounts and terms of such Administrative Fees are compliant with the requirements of this Section 11. Developer shall publish the amount of any Administrative Fee pursuant to Section 4.

(iv) **Paper Statements and Invoices.** If Developer issues a paper statement or invoice to a User, Developer may charge a reasonable fee to recover the cost of printing and mailing the paper document. Such fee shall not exceed $1.50 per mailing (Escalated Annually – CPI, and rounded to the nearest one-cent). Developer shall provide Users with the option to receive free electronic documents in lieu of paper documents. No paper statement fee shall be charged for any Violation notice.

(v) **Violation Fee.** Developer may charge a Violation Fee. The amount of the Violation Fee, and the circumstances under which such fee may be charged, shall be consistent with TxDOT's practices for similar fees charged for toll violations on toll facilities operated by TxDOT.

EXHIBIT 11
FORM OF TXDOT TOLLING SERVICES AGREEMENT

*** * * * ***

TOLLING SERVICES AGREEMENT FOR STATE HIGHWAY 288 TOLL LANES IN HARRIS COUNTY

This Tolling Services Agreement (together with its exhibits and as amended from time to time, this "**TSA**") is entered into and effective as of [●], by and between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and [●], a [●] limited liability company ("**Developer**").

RECITALS

A. TxDOT and Developer have entered into that Comprehensive Development Agreement (State Highway 288 Toll Lanes in Harris County) dated as of [●] (the "**CDA**"), pursuant to which TxDOT confers upon Developer certain rights to finance, develop, design, acquire, construct, use, toll, operate and maintain the Project described therein.

B. Developer desires to engage TxDOT to provide, and TxDOT desires to provide, certain tolling services, as provided herein, in support of Developer's performance under the CDA.

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

ARTICLE 1
TERM; DEFINITIONS

1.1 Term. This TSA shall remain in effect until the expiration or earlier termination of the CDA, unless earlier terminated in accordance with its terms.

1.2 Definitions. Capitalized terms used but not defined in this TSA have the meanings ascribed to them in Exhibit 1 to the CDA. Unless otherwise specified, wherever the following abbreviations or terms are used in this TSA, they have the meanings set forth below:

"**Administrative Fees**" means those fees permitted to be charged pursuant to, and subject to, Section 11 of Exhibit 10 to the CDA, as described in Section 4.3 below.

"**Candidate Vehicle**" means a vehicle for which Developer transmits to TxDOT's CSC Host, as required by the ICD and this TSA, either (a) a valid Transponder Transaction or (b) a Video Transaction with an unobstructed readable video image of a license plate that bears a serialized or personalized plate number and means to identify the plate type and the issuing jurisdiction to be able to ultimately identify the vehicle's owner, which in the case of a vehicle with a trailer (including a truck with a trailer) must be the front license plate. For this purpose, a "readable video image" means an image produced by the video-based enforcement system and transmitted to TxDOT's CSC Host in which the plate number, plate type and issuing jurisdiction can be reliably read electronically or by the human eye.

"**CSC Host**" means TxDOT's central computer system that supports customer service center back-office tolling services functions required to be undertaken by TxDOT pursuant to this TSA.

"**Custodian**" means the custodial bank party to the Master Lockbox and Custodial Account Agreement.

"**Electronic Toll Collection System**" (**ETCS**) means the electronic toll collection system, including its components, systems and subsystems, the hardware and physical infrastructure, and the software provided by Developer.

"**Image-Based Billing**" means, if and when Image-Based Billing is allowed pursuant to Section 10(a) of Exhibit 10 to the CDA, operation of the Toll Lanes in a manner that promotes or accommodates Video Transactions by Users that will not be treated or processed as Violations (unless and until the User fails to pay the associated invoice for the Video Transaction), including "pay-by-mail" and similar programs.

"**Image-Based Billing Toll Premium**" means the additional toll amount permitted to be charged to Users for a Video Transaction billed through Image-Based Billing (such as "pay-by-mail") pursuant to Section 10(b) of Exhibit 10 to the CDA (if and when Image-Based Billing is allowed).

"**Interface Control Document**" (**ICD**) means the then-current TxDOT document setting forth interface standards including the manner in which data shall be transmitted and received between the CSC Host and the ETCS, as the same may be changed from time to time at TxDOT's discretion.

"**Master Lockbox and Custodial Account Agreement**" means that certain Master Lockbox and Custodial Account Agreement, dated as of November 9, 2007, between TxDOT and The Bank of New York Mellon Trust Company, N.A., as Custodian.

"**Third-Party Transponder Account**" means the electronic tolling account of a User for a transponder issuer by a Third-Party Transponder Issuer.

"**Third-Party Transponder Issuer**" means a Transponder Issuer other than TxDOT.

"**Third-Party Transponder Transaction**" means a Transponder Transaction using a transponder issued by a Third-Party Transponder Issuer.

"**Toll Transaction**" means an electronic record of a toll and a related set of contemporaneous video images that are properly transmitted by the ETCS to a CSC Host respecting a vehicle that passes through a tolling gantry on a Toll Lane on the Project, including a Transponder Transaction or a Video Transaction. Whether a Toll Transaction is a Transponder Transaction or a Video Transaction will be determined by the CSC Host based on the disposition of the Toll Transaction at the time of the settlement of funds for the Toll Transaction.

"**Tolling Services Agreement**" (**TSA**) means this Tolling Services Agreement.

"**Transaction Fee**" means the fee to be charged to Developer by TxDOT pursuant to Section 5.1.

"**Transponder Issuer**" means any Person, including TxDOT, HCTRA and NTTA, who or which (a) issues transponders for mounting in vehicles and transacting Transponder Transactions on tolled roadways in the State or in any other state of the United States, (b) participates with TxDOT in interoperability protocols, agreements and arrangements, and (c) under such interoperability protocols, agreements and arrangements, covenants to remit payments to the other participants of all Toll Transactions that meet the terms for transmission, debiting and payment, and are required to be included in the current payment cycle, as set forth in such protocols, agreements and arrangements.

"**Transponder Transaction**" means a Toll Transaction respecting a vehicle that is equipped with a valid (i.e., not suspended or reported as lost or stolen), properly mounted, readable and working transponder issued by a Transponder Issuer that is associated with an account that is open (i.e., not suspended or closed) and has a sufficient account balance at the time of debit or re-debit to pay in full the applicable toll.

"**TxTag**" means the transponder issued by TxDOT (directly or through a TxDOT-approved distributor).

"**TxTag Account**" means the TxTag electronic tolling account of a TxTag Holder.

"**TxTag Holder**" means a User whose transponder is a TxTag.

"**TxTag Transaction**" means a Transponder Transaction using a TxTag.

"**Video Transaction**" means a Toll Transaction respecting a vehicle does not qualify as a Transponder Transaction, regardless of whether the Toll Transaction results in a Violation or Image-Based Billing.

"**Violation**" means (a) unless and until Image-Based Billing is allowed for use of the Toll Lanes, a Video Transaction that the tolling services provider could not post to and receive payment from a pre-paid account pre-established by or for the User for the purpose of paying tolls and (b) if and when Image-Based Billing is allowed for use of the Toll Lanes, a Video Transaction that remains unpaid after the tolling services provider has taken all required steps under applicable Law to notify the User of the amount due and the consequences of non-payment.

"**Violation Fee**" means the Administrative Fee charged for Violations.

1.3 Construction and Interpretation

(a) **Number.** In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa.

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

(c) **References to this TSA.** The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this TSA 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 TSA. 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.

(d) **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.

(e) **References to Any Person.** A reference in this TSA to any Person at any time refers to such Person's permitted successors and assigns.

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

(g) **Meaning of Discretion.** In this TSA, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

(h) **Notice, Approval, Etc., in Writing.** Whenever this TSA requires or provides for any notice, approval, consent, acceptance, determination, decision, explanation, information or the like, the same and any request therefor must be in writing (unless otherwise waived in writing by the other Party).

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

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

(k) **Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this TSA are to the lawful currency of the United States of America.

(l) **Time.** Unless specified otherwise, all references to time are to local time in Austin, Texas.

ARTICLE 2
RESPONSIBILITIES RETAINED BY DEVELOPER

2.1 Generally. All obligations of Developer under the CDA are retained by Developer except for those specific services for which Developer has retained TxDOT pursuant to the express terms of this TSA. The enumeration of specific obligations retained by Developer in this Article 2 is not intended to limit the generality of the foregoing.

2.2 Equipment. Developer shall install, replace and maintain in good condition throughout the Term (a) equipment that complies with the requirements of the CDA and that will identify vehicles equipped with a transponder issued by TxDOT (either directly by TxDOT or though a TxDOT-approved distributor) or a Third-Party Transponder Issuer and (b) video equipment and related lane controller equipment designed to capture video images of and/or data concerning vehicles passing through tolling stations as required by the Interface Control Document.

2.3 Data Capture. Developer shall be responsible for capturing data evidencing each Toll Transaction and transmitting a properly formed Toll Transaction to TxDOT (which will include all of the information required by the Interface Control Document for each such Toll Transaction) in accordance with this TSA pursuant to the Interface Control Document or any other communications protocols in effect hereunder from time to time. Without limiting the foregoing, Developer shall be responsible for (a) determining the applicable toll for each Toll Transaction and transmitting the applicable toll information to TxDOT with its transmittal of other Toll Transaction data pursuant to the preceding sentence and (b) conducting all video image reviews and Toll Transaction matching required to determine Video

Transactions. TxDOT shall not have any responsibility for any of the activities described above in this Section 2.3.

2.4 Certain Services. Developer shall be responsible for (a) storefront services, except such services at TxDOT's customer service centers, (b) any public relations work for the Project, other than customer relations in the ordinary course of handling customer accounts, inquiries and communications, (c) maintenance of a Project web site (as distinguished from TxDOT's own web site and web-based customer service center), (d) any marketing or promotional work or services for the Project, other than customer relations, and (e) any maintenance work on Developer's toll collection system. In no event, however, shall TxDOT be prohibited from providing any such services in connection with its own facilities or those of any third party.

2.5 Change in Toll System Technology. Developer shall make no change to the toll system technology deployed for the Toll Lanes that will adversely affect the reliability of, or the ability to meet applicable standards for, transmission of data to the CSC Host.

2.6 Training Support. Developer shall be responsible for providing reasonably detailed information to TxDOT from time to time for purposes of training TxDOT's customer service personnel adequately to respond to customer inquiries concerning Developer's toll pricing models.

2.7 Transponder Issuance; Competitive Actions. Developer shall not issue any transponders to or impose any tolls on Users in connection with the Project other than as permitted by this TSA, and Developer otherwise shall not take any actions in competition with the rights and responsibilities of TxDOT hereunder; *provided*, however, that the foregoing shall not preclude Developer from marketing activities, from distributing TxDOT-issued transponders on its own premises in its capacity as a distributor of TxDOT, from exercising rights and remedies expressly provided to Developer hereunder in respect of this TSA or in the CDA in respect of the CDA, and activities of Developer or any of its affiliates in connection with other toll roads).

ARTICLE 3
SERVICES PERFORMED BY TXDOT

3.1 Services. TxDOT shall provide complete back office functions pertaining to toll collection and enforcement for the Project, consistent with the practices utilized by TxDOT with respect to its own facilities. TxDOT shall provide all staffing, supervision, support services, data services, CSC Host equipment, and materials necessary to perform such functions in a timely manner. Such functions include the following:

(a) **Customer Service.** TxDOT shall provide customer service operations, staffed by customer service representatives with access to all electronic account and toll violation information and ability to resolve most issues or questions with the customer through various contact channels, including:

(i) transponder distribution support;

(ii) walk-in customer service and support;

(iii) staffing and maintaining call center operations for customer and general inquiries with sufficient call handling capacity to answer calls in accordance with the Performance Standards;

(iv) operating and maintaining an industry-standard interactive voice response system in English and Spanish configured to allow customers, without charge, to obtain automated information,

to transfer or be directed to a specific source of information, to access account maintenance functions and to speak in English or Spanish with a live customer service representative;

(v) creating and managing an industry standard interactive web site, with the customer service center portion of the web site in English and Spanish, which may be used for disseminating information on TxDOT's transponder program and allowing a customer to conduct secure account maintenance activities such as opening an account, changing information on an account, viewing account status and statements, replenishing an account balance and with a posted privacy notice, and such web site shall allow dissemination and receipt of information simultaneously with multiple users without unreasonable delay in responses;

(vi) maintaining an e-mail address for all inquiries and comments regarding account maintenance matters from customers and the public;

(vii) receipt of and response to e-mails on a timely basis during normal business hours; and

(viii) the ability of customers to send facsimile communications to the customer service center 24 hours per day seven days per week, and responding to such communications during normal business hours.

(b) **Location of Call Center Operations and CSC Host.** TxDOT shall determine the location or locations of its call center operations and CSC Host. TxDOT may change any such location from time to time, and no such change in location shall entitle Developer to any Claim or additional compensation.

(c) **Account Management.** TxDOT shall manage and maintain User accounts, including by setting up new personal and commercial accounts, managing transponder replacement, automatic replenishing of TxDOT accounts to pre-determined levels when accounts reach low balance thresholds, accepting payments (pursuant to payment methods consistent with those utilized by TxDOT with respect to its own facilities) to replenish accounts, and issuing monthly statements to TxDOT account holders (or other frequency as may be agreed between TxDOT and such account holders) providing an activity summary that itemizes usages, related toll charges and other Administrative Fees;

(d) **Transponder Issuance.** TxDOT shall issue and replace TxTags as requested by Users. TxDOT shall choose the transponders to offer to Users consistent with non-Discriminatory TxDOT standards and practices regarding transponder design, engineering and functionality. TxDOT shall issue TxTags to customers expeditiously upon a request therefor. If HCTRA is no longer a party to that certain Interlocal Agreement among Transponder Issuers operating in the State of Texas or a successor interoperability agreement with TxDOT, TxDOT shall diligently market TxTags to Users in the region of the Project.

(e) **Transaction Processing**

(i) TxDOT shall process each Transponder Transaction and payment against the User's account and cause the User's account to be debited for toll charges and Administrative Fees on a "first in" basis according to the date and time received by TxDOT, all subject to the Master Lockbox and Custodial Account Agreement and Article 4.

(ii) If and when Image-Based Billing is allowed pursuant to Section 10(a) of Exhibit 10 to the CDA, TxDOT shall process each Video Transaction that results in Image-Based Billing

consistent with TxDOT's practices regarding customers of its own facilities, including issuing billing statements to such Users with itemization of toll charges and Administrative Fees, processing of payments received including reconciliation with billing statements, and accepting payment (pursuant to payment methods consistent with those utilized by TxDOT with respect to its own facilities), all subject to the Master Lockbox and Custodial Account Agreement and Article 4.

(iii) TxDOT shall have no duty to attempt to collect or enforce a toll respecting a vehicle traveling on the Project where the vehicle is not a Candidate Vehicle.

(iv) TxDOT shall have no duty to accept for processing transmissions of Toll Transaction data not in the format and having the content required by the Interface Control Document. If TxDOT accepts such data for processing, then the matter shall be treated as a Toll Transaction for all purposes under this TSA. If TxDOT does not accept such data, TxDOT shall reject the data in accordance with the Interface Control Document and shall not process the matter for collection or enforcement unless and until TxDOT subsequently accepts transmission of the data.

(g) **Interoperability and Clearinghouse Services.** TxDOT shall provide clearinghouse services among operators of toll roads and issuers of transponders based on interoperability agreements to which TxDOT is a party.

(g) **Violation Enforcement.** TxDOT shall diligently process and enforce Violations, including issuing invoices and notices of Violations and initiating collection and legal enforcement proceedings, in accordance with Chapter 228 of the Texas Transportation Code and Chapter 372 of the Texas Transportation Code or other Laws applicable to TxDOT, in accordance with Good Industry Practice, and consistent with TxDOT's practices regarding customers of its own facilities.

(h) **Reporting and Internal Controls.** TxDOT shall implement appropriate reporting, reconciliation, accounting, audit and quality assurance processes in accordance with Good Industry Practice, including internal controls to minimize the possibility of inadvertent and illegal diversion of Toll Revenues, and including (i) controlled access to all TxDOT computer systems and subsystems, (ii) control by user group scheme, (iii) state of the art virus protection and firewall software and (iv) maintaining a secure record of system access and breaches of security, consistent with Good Industry Practice.

(i) **Information Required by Certain Law.** TxDOT shall provide to the appropriate governmental agencies or entities of the State of Texas the calculation and information required to be furnished by TxDOT pursuant to Section 228.0055(b) of the Texas Transportation Code (or any successor law thereto).

3.2 Interoperability and Clearinghouse Services. TxDOT shall provide clearinghouse services among operators of toll roads and issuers of transponders based on interoperability agreements to which TxDOT is a party.

3.3 Performance Standards

(a) **Applicable Standards.** TxDOT shall perform the functions and services described in this Article 3 in accordance with applicable Law, Good Industry Practice, and TxDOT's practices regarding its own facilities (including TxDOT's standard business rules), as the same may be updated from time to time. Subject to Section 1.5 of the CDA, TxDOT has posted information about its practices as of the Proposal Due Date as Reference Information Documents.

(b) **Diligent Performance.** TxDOT shall perform the functions and services described in this Article 3 diligently, with no less speed or attention than TxDOT devotes to other facilities for which TxDOT provides similar services.

(c) **Subcontractors.** TxDOT may contract with third parties from time to time to perform certain toll operation services in support of the CSC Host. As of the effective date of this TSA, TxDOT is party to such a contract with Xerox Corp. To the extent any such contract includes functions or services to be performed by TxDOT under this TSA, TxDOT agrees to monitor and enforce such contract in accordance with its terms. Failure of such contractor to comply with its obligations shall not, in and of itself, excuse TxDOT's failure or breach hereunder.

(d) **Reporting and Internal Controls.** TxDOT shall implement appropriate reporting, reconciliation, accounting, audit and quality assurance processes in accordance with Good Industry Practice, including internal controls to minimize the possibility of inadvertent and illegal diversion of Toll Revenues, and including (i) controlled access to all TxDOT computer systems and subsystems, (ii) control by user group scheme, (iii) state-of-the-art virus protection and firewall software and (iv) maintaining a secure record of system access and breaches of security, consistent with Good Industry Practice.

3.4 Excused Nonperformance. TxDOT shall be temporarily excused from complying with the requirements and standards set forth in this Article 3 to the extent its inability to comply is directly attributable to any failure or inability of Developer to comply with the Interface Control Document or to meet the ETCS performance requirements set forth in the Technical Provisions.

3.5 Records

(a) **Recordkeeping.** TxDOT shall maintain, in accordance with Good Industry Practice, accurate and complete books and records, including electronic data, of or relating to (a) all Transponder Transactions via TxDOT's CSC Host, (b) all actions and dispositions by TxDOT with respect to each Transponder Transaction received via TxDOT's CSC Host, (c) all data, information and calculations relevant to payment of Transaction Fees and other fees and charges that TxDOT charges to Developer, itemized by each Transponder Transaction and by type, date and amount, (d) all Violations by User, date and amount, (e) all Administrative Fees, and (f) TxDOT's performance of its obligations under this TSA. All such books and records shall be kept at a location in the State, and TxDOT shall notify Developer where such records and documents are kept. TxDOT shall retain such books and records for the same period of time it keeps other books and records relating to performing its clearinghouse function, except that all records that relate to claims and disputes between TxDOT and Developer shall be retained and made available until any later date that such claims or disputes and actions are finally resolved.

(b) **Data Backup.** TxDOT shall implement data backup and disaster recovery systems in accordance with Good Industry Practice and retention of Project-related data.

(c) **Inspection by Developer.** TxDOT shall make available books and records maintained by TxDOT pursuant to Section 3.5(a) for audit and inspection by Developer or its designees at the location where such books and records are customarily maintained, during normal business hours, without charge. Developer shall provide notice to TxDOT of any audit or inspection, together with facts supporting a reasonable basis for such audit or inspection, at least 48 hours before conducting such audit or inspection, except that Developer may conduct such audit or inspection unannounced and without prior notice where there is good faith suspicion of fraud by TxDOT in connection with performance of its obligations under this TSA. The right of inspection includes the right to make extracts and take notes.

3.6 Meetings. Developer and TxDOT shall conduct meetings at least once per month, or such other frequency as the Parties mutually agree, to review, discuss and resolve matters relating to coordination, services, quality control, performance, customer service, tolling (including any issues related to erroneous pricing set by Developer or billing by TxDOT and "readability" of transferred video images), payment and other matters arising under this TSA. The Parties shall schedule all meetings at a mutually convenient date, time and place. In addition to regularly scheduled meetings, Developer and TxDOT shall cause their respective representatives to be available at all reasonable times (generally, during regular business hours) for consultation with one another and with the Independent Engineer.

ARTICLE 4
ACCOUNTS AND TRANSACTIONS

4.1 Custodial Account

(a) **Master Lockbox and Custodial Account Agreement; Joinder Agreement.** TxDOT has entered into, and shall cause to be kept in effect for so long as this TSA remains in effect, the Master Lockbox and Custodial Account Agreement. The Parties shall enter into a joinder agreement in the form set out as Exhibit B hereto, pursuant to which TxDOT shall designate Developer to be a "Beneficiary" under the Master Lockbox and Custodial Account Agreement and acknowledges that the Collateral Agent shall be a "Secured Party" under the Master Lockbox and Custodial Account Agreement designated by Developer.

(b) **Interest Earned on Accounts.** Any interest earnings on amounts held by the Custodian prior to the time such amounts are required to be distributed by the Custodian to Developer shall be paid to TxDOT, and any interest earnings on such amounts on and after such required date of distribution shall be paid by the Custodian to Developer. TxDOT shall specify the date of each required distribution by the Custodian in its payment instructions to the Custodian under the Master Lockbox and Custodial Account Agreement, and TxDOT agrees that such dates shall be on or before the dates that payments are required to be made by TxDOT under Section 4.4.

(c) **Bailee Status.** If for any reason TxDOT receives any payment for a Toll 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 for deposit into the appropriate Master Custodial Account under the Master Lockbox and Custodial Account Agreement.

(d) **Priority of Payments.** Pursuant to the terms of the Master Lockbox and Custodial Account Agreement, TxDOT covenants and agrees that with respect to any amounts payable to TxDOT, Developer, Collateral Agent or any other Person out of the funds held by the Custodian under the Master Lockbox and Custodial Account Agreement, after payment of the Administrative Fees, Interoperability Fees and Transaction Fees as provided in the Master Lockbox and Custodial Account Agreement, TxDOT will instruct the Custodian to make payments to such persons, in the event of a shortfall in the total amount available, based on a priority rule: priority will be given to payment for those Toll Transactions for which transaction data was first transmitted to the CSC Host following a trip on that toll road operator's facility.

4.2 Transmission of Transaction Data

(a) **Transmission of Transponder Transaction Data.** Transaction data for a Transponder Transaction (whether a TxTag Transaction or a Third-Party Transponder Transaction) shall be deemed to be transmitted to TxDOT only if and when TxDOT determines that (i) the vehicle is associated with a

valid transponder issued by a Transponder Issuer, (ii) the account balance is sufficient to pay the toll in full at the time the Transponder Transaction is processed and posted to the account, and (iii) the transponder is properly read or written to.

(b) **Transmission of Video Transaction Data.** Transaction data for a Video Transaction shall be deemed to be transmitted to TxDOT only if and when TxDOT determines that video images of the vehicle passing through the tolling gantry have been properly transmitted to a CSC Host.

(c) **Interface**

(i) Developer shall cause the ETCS to interface with TxDOT's CSC Host system in accordance with TxDOT's standards and requirements (as specified by the Interface Control Document, and as otherwise set forth in this TSA). For the avoidance of doubt, Developer shall ensure that the ETCS is compliant with the latest version of the Interface Control Document, including future updates. If any change to the ETCS is needed to maintain compliance with the latest version of the Interface Control Document, Developer shall implement such change in a timely manner.

(ii) Developer acknowledges that the Interface Control Document is intended to be a framework for the interface between a subscriber and a service provider; that the Interface Control Document supports many different types of systems with different unique needs, requirements and contractual obligations; and that the Interface Control Document is subordinate to, and is not intended to supersede or alter, any of the express provisions of this TSA or the CDA. The implementation details regarding which optional data fields listed in the Interface Control Document should be used for the Project, and which exact data field codes should be used, shall be determined in accordance with TxDOT's standard business rules.

(d) **Identification of Exempt Vehicles.** Before transmitting the transaction data for a potential Toll Transaction to TxDOT, Developer shall be responsible for identifying whether a Candidate Vehicle is an Exempt Vehicle, except that TxDOT shall be responsible for determining whether a Candidate Vehicle is an Exempt Vehicle under clause (c) (TxDOT contractors), clause (e) (veteran license plates) or clause (g) (other exempt vehicles under Law) of the definition of "Exempt Vehicle". The foregoing does not preclude TxDOT from subsequently determining that a Candidate Vehicle is an Exempt Vehicle even though Developer may have failed to identify the Candidate Vehicle as such.

4.3 TxTag Accounts and Transactions; Credit Card Advances

(a) **TxTag Accounts.** TxDOT may establish and enforce reasonable minimum amounts for opening, maintaining and replenishing electronic tolling accounts for TxTag Holders. Sums that a TxTag Holder deposits to fund his or her TxTag Account shall not constitute Toll Revenues or be due to Developer until debited from the TxTag Account for the TxTag Holder's use of the Toll Lanes.

(b) **Credit Card Advances.** For any TxTag Holder that has agreed to permit TxDOT to request advances on his or her credit card, TxDOT shall timely request and process such advances whenever the current balance of funds on deposit to the credit of such TxTag Holder's TxTag Account are not sufficient to either pay any amounts payable with respect to such TxTag Account, including for any use of the Toll Lanes, or to satisfy any minimum cash balance requirements applicable to such TxTag Account.

(c) **TxTag Transactions.** TxDOT shall instruct each TxTag Holder, as well as any credit card company for which TxDOT has authorization to request advances on behalf of a TxTag Holder, to make or cause to be made all payments with respect to such TxTag Holder's TxTag Account not to

TxDOT but instead into the appropriate lockbox account under the Master Lockbox and Custodial Account Agreement.

4.4 Third-Party Transponder Transactions (e.g., HCTRA and NTTA Transponders)

(a) TxDOT shall instruct each Third-Party Transponder Issuer to make or cause to be made all payments with respect to Third-Party Transponder Transactions by its customers either into the appropriate lockbox account under the Master Lockbox and Custodial Account Agreement or directly to the Custodian by electronic funds transfer for deposit into the appropriate revenue account under the Master Lockbox and Custodial Account Agreement.

(b) If a Third-Party Transponder Issuer that is party to that certain Interlocal Agreement among Transponder Issuers operating in the State of Texas, as amended as of June 19, 2013, fails to remit a settlement payment for Third-Party Transponder Transactions in violation of its then-current obligations under such Interlocal Agreement and the Interoperability Business Requirements and the Interface Control Documents agreed upon by the parties to such Interlocal Agreement, and if TxDOT does not pursue such Third-Party Transponder Transactions as Violations, TxDOT agrees to advance such payment in accordance with Section 4.4 (i.e., to the appropriate lockbox account under the Master Lockbox and Custodial Account Agreement or directly to the Custodian by electronic funds transfer for deposit into the appropriate revenue account under the Master Lockbox and Custodial Account Agreement) within 60 days after the end of the month during which the Third-Party Transponder Issuer was obligated to, but failed to, remit such payment. TxDOT shall be entitled to reimbursement, without interest, for such advance upon eventual receipt of the payment from the Third-Party Transponder Issuer. This Section 4.4(b) is intended to apply only to a wrongful or negligent failure of a Third-Party Transponder Issuer to remit an otherwise uncontested settlement payment for a batch of numerous Third-Party Transponder Transactions; this Section 4.4(b) does not apply to a failure to remit payment for one or more isolated Third-Party Transponder Transactions or for Third-Party Transponder Transactions for which the validity or payment is disputed by the Third-Party Transponder Issuer.

4.5 Video Transactions (Image-Based Billing and Violations). TxDOT shall instruct or cause each User whose use of the Toll Lanes results in a Video Transaction to make payments with respect to the Video Transaction (including any Image-Based Billing Premium) into the appropriate lockbox account under the Master Lockbox and Custodial Account Agreement.

4.6 Payments to Developer; Non-Collection. TxDOT shall instruct the Custodian to transfer any payments received in respect of a Toll Transaction, net of any Transaction Fee, Interoperability Fee and Administrative Fees, to Developer or Developer's designee from the revenue accounts under the Master Lockbox and Custodial Account Agreement pursuant to Section 2.03 of such agreement. TxDOT shall not be liable to Developer for the payment of any toll that TxDOT is unable to collect from the User after using its commercially reasonable efforts to perform the services required to be performed by TxDOT under this TSA.

4.7 Customer Overcharges and Refunds

(a) TxDOT shall charge the toll for each Toll Transaction indicated by Developer (other than for an Exempt Vehicle). Developer shall be responsible to determine the applicable toll charge that corresponds to each Toll Transaction based upon User Classification (including whether the User is an Exempt Vehicle), Developer's applicable toll pricing model, and any applicable discount and to communicate such information to TxDOT correctly. For the avoidance of doubt, if Developer states a toll charge for a Toll Transaction different from the toll charge for the User Classification associated with the applicable customer account, TxDOT shall charge the toll charge as indicated by Developer. The

foregoing does not waive any of Developer's obligations or any of TxDOT's rights and remedies under the CDA (including Exhibit 10 thereto) regarding toll rates that may be charged to Users.

(b) Under no circumstances shall TxDOT charge any User a toll in addition to or higher than the toll charge transmitted from Developer to TxDOT, except that TxDOT may charge for the Administrative Fees authorized hereunder. TxDOT shall refund to any User any toll or Administrative Fee that TxDOT charges in violation of this provision.

(c) If TxDOT is or becomes aware that any User has been overcharged or incorrectly charged for use of the Toll Lanes by reason of inaccurate toll charges transmitted from Developer to TxDOT, TxDOT shall arrange for a refund to the subject User. Developer shall reimburse TxDOT for the amount of such refund within two Business Days after receipt of an invoice therefor from TxDOT.

ARTICLE 5
COMPENSATION FOR SERVICES; FEES

5.1 Transaction Fee

(a) Developer shall pay to TxDOT a Transaction Fee for each Toll Transaction recorded by the ETCS and transmitted to the CSC Host and collected from the User. The Transaction Fee shall be determined based on Toll Transaction type as set out in column "A" Table 1, regardless of User Classification, by adding (i) the fixed transaction fee amount set out in column "B" of Table 1 (as may be increased each year in accordance with this Section 5.1) and (ii) the variable transaction fee amount (if any) equal to the percentage set out in column "C" of Table 1 multiplied by the amount collected from the User (including the toll, any Image-Based Billing Premium and any Violation Fee). The Transaction Fee shall be paid only for those Toll Transactions for which the toll is collected from the User. The amount of the Transaction Fee shall be determined based upon the Transaction Fee schedule in effect as of the date on which the toll is collected from the User and deposited into the appropriate lockbox or revenue account (as contemplated by the Master Lockbox and Custodial Account Agreement). For each toll collected, TxDOT may instruct the Custodian to distribute to TxDOT the Transaction Fee then due and payable to TxDOT prior to the Custodian's distribution of amounts to Developer.

(b) The amounts in column "B" of Table 1 are as of January 1, 2012. TxDOT may increase an amount in column "B" each calendar year thereafter up to the maximum amount, including (for the avoidance of doubt) retroactively as of January 1, 2013 and January 1, 2014. For each such amount, the "maximum amount" shall be determined each year by increasing the prior year's maximum amount by the greater of (i) 3% or (ii) the percentage increase in GSP Per Capita (as defined in Exhibit 10 to the CDA) between GSP Per Capita for the third immediately preceding year and GSP Per Capita for the second immediately preceding year. For clarity, if TxDOT elects to increase any amount in column "B" by less than the maximum amount, subsequent increases in the maximum amount shall continue to be determined based upon the maximum amount, without regard to less-than-maximum increases. Further for clarity, the Bureau of Economic Analysis releases the GSP data for a year in the middle of the following year; therefore, by way of example, the adjustment that would be made as of January 1, 2013 would the increase in GSP Per Capita between the GSP Per Capita for 2010 (released in mid-2011) and the GSP Per Capita for 2011 (released in mid-2012).

Table 1
Transaction Fees and Interoperability Fees

Column A **Toll Transaction Type** (as determined by TxDOT based on the final disposition of the Toll Transaction as processed by the CSC Host)	**Column B** **Fixed Transaction Fee** (as of January 1, 2012)	**Column C** **Variable Transaction Fee** (per Toll Transaction, calculated as a percentage of the amount collected, including toll, Image-Based Billing Premium and Violation Fee)	**Column D** **Interoperability Fee** (for reference only; refer to Section 5.2)
Transponder Transactions			
Rejected or unprocessable Transponder Transaction	$0.000	N/A	N/A
Exempt Vehicle Transponder Transaction	$0.000	N/A	N/A
Third-Party Transponder Transaction	$0.050	N/A	8%
TxTag Transaction	$0.130	N/A	N/A
Video Transactions			
Rejected, unprocessable or written-off Video Transaction	$0.000	N/A	N/A
Exempt Vehicle Video Transaction	$0.000	N/A	N/A
Video Transaction paid from Third-Party Transponder Account	$0.310	N/A	8%
Video Transaction paid from TxTag Account	$0.390	N/A	N/A
Image-Based Billing Transactions (if allowed by TxDOT)	$0.390	N/A	N/A
Violation, paid through TxDOT's collections agency or court process	$0.080	18.5%	N/A
Violation, paid otherwise	$0.410	N/A	N/A

5.2 Interoperability Fee. The Parties acknowledge that an Interoperability Fee may be owing for any Third-Party Transponder Transaction or Video Transaction paid from a Third-Party Transponder Account. Developer shall bear the cost of the Interoperability Fee. The Interoperability Fee for such a Toll Transaction will be either (a) deducted by the Third-Party Transponder Issuer prior to remitting payment for the Toll Transaction or (b) paid on Developer's behalf by TxDOT or the Custodian from funds in the appropriate account of the Master Lockbox and Custodial Account Agreement. (Refer to Section 4.6 of the CDA for the consequences of any change in the percentage amount of the Interoperability Fee.)

5.3 Administrative Fees

(a) TxDOT also shall have the right, to the extent permitted by applicable Law, to fix, charge, enforce and collect the following Administrative Fees with respect to electronic tolling accounts managed by TxDOT: (i) amounts for the purchase or rental of transponders or other electronic toll devices; (ii) refundable security deposits for the distribution of transponders or other electronic toll devices; (iii) administrative fees for account maintenance and account statements; (iv) fees, penalties and interest for Violations, including costs of collection; and (v) other customary incidental fees and charges. TxDOT shall have the right to establish rates for Administrative Fees equal to the standard general rates that TxDOT has in effect from time to time for comparable services for its account holders respecting toll facilities operated by TxDOT. Developer shall have no right to any portion of the Administrative Fees, except as provided in Section 5.3(b). TxDOT may apply relevant Administrative Fees to exempt vehicle operators that request transponders or other electronic tolling devices. TxDOT may instruct the Custodian to distribute Administrative Fees to TxDOT when due and payable to TxDOT prior to the Custodian's distribution of amounts to Developer.

(b) To compensate Developer for its costs with respect to Violations separate from those costs incurred by TxDOT, including the costs and risks of collection, TxDOT shall remit or cause to be remitted to Developer 50% of the amount of any Violation Fee actually collected from the User (after first deducting and paying to TxDOT the Transaction Fee and paying the amount of the toll to Developer). TxDOT shall have no obligation whatsoever to pay Developer for any toll or violation fee amount to the extent not collected or to the extent the amount collected does not exceed the Transaction Fee.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties by TxDOT. TxDOT represents and warrants to Developer that, as of the effective date of this TSA:

(a) TxDOT is duly organized and validly existing under the laws of the state of Texas and has full power, right and authority to execute, deliver and perform this TSA and each and all of the obligations of TxDOT provided for herein.

(b) The execution, delivery and performance of this TSA have been duly authorized by all necessary action of TxDOT; each person executing this TSA on behalf of TxDOT has been duly authorized to execute and deliver it on behalf of TxDOT; and this TSA has been duly executed and delivered by TxDOT. This TSA constitutes the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.

(c) Neither the execution and delivery by TxDOT of this TSA, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments or governing statutes of TxDOT or any approvals or laws applicable to TxDOT.

(d) 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, this TSA or which challenges the authority of the TxDOT official executing this TSA; and TxDOT has disclosed to Developer any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TxDOT is aware.

6.2 Representations and Warranties by Developer. Developer represents and warrants to TxDOT that, as of the effective date of this TSA:

(a) Developer is a [limited liability company] duly organized and validly existing under the laws of the State of [●], 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 this TSA and to perform each and all of the obligations of Developer provided for herein. Developer is duly qualified to do business, and is in good standing, in the State of Texas.

(b) The execution, delivery and performance of this TSA have been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) of Developer; each person executing this TSA on behalf of Developer has been duly authorized to execute and deliver it on behalf of Developer; and this TSA has been duly executed and delivered by Developer. This TSA constitutes 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 general principles of equity.

(c) Neither the execution and delivery by Developer of this TSA, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Developer or any approvals or laws applicable to Developer.

(d) There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, this TSA or which challenges the authority of the Developer official executing this TSA; and Developer has disclosed to TxDOT any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

6.3 Survival. The representations and warranties of TxDOT and Developer in this Article 6 shall survive for a period of two years following the expiration or earlier termination of this TSA.

6.4 Developer Good Standing. Developer covenants and agrees that it will maintain its existence and will remain in good standing in the State of Texas throughout the term of this TSA and will maintain its existence for as long thereafter as any obligations remain outstanding under this TSA. The provisions of this Section 6.4 shall survive the expiration or earlier termination of this Tolling Services Agreement.

ARTICLE 7
DEFAULTS AND REMEDIES; DISPUTE RESOLUTION; TERMINATION

7.1 TxDOT Default. TxDOT shall be in breach of this TSA upon the occurrence of any one or more of the following events or conditions (each a "**TxDOT Default**"):

(a) TxDOT fails to make any payment to Developer when due hereunder, and the failure to pay continues for 30 days after Developer delivers notice thereof to TxDOT;

(b) any representation or warranty of TxDOT hereunder was not true when made, and such failure has a material adverse effect on TxDOT's ability to perform its obligations in accordance with the requirements of this TSA;

(c) TxDOT assigns its rights and obligations under this TSA in violation of this TSA; or

(d) TxDOT fails to perform any other obligation of TxDOT hereunder, and the failure to perform such other obligation continues for 30 days after Developer delivers notice thereof to TxDOT (or if TxDOT has begun diligently pursuing a cure of such failure within such 30 days and continues to diligently pursue such cure, then 90 days after Developer delivers notice thereof to TxDOT).

7.2 Developer Remedies for TxDOT Default. In the event of any TxDOT Default, Developer shall be entitled to exercise the following rights and remedies (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies):

(a) Developer shall be entitled to recover all losses and damages incurred as a result of such TxDOT Default;

(b) Developer may terminate this TSA, effective upon 180 days' prior notice by Developer to TxDOT; and

(c) Developer shall be entitled to all other rights and remedies available under this TSA, at Law or in equity (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies).

7.3 Developer Default. Developer shall be in breach of this TSA upon the occurrence of any one or more of the following events or conditions (each a "**Developer Default**"):

(a) Developer fails to make any payment to TxDOT when due hereunder, and such failure continues for 30 days after TxDOT delivers notice thereof to Developer;

(b) any representation or warranty of Developer hereunder was not true when made, and such failure has a material adverse effect on Developer's ability to perform its obligations in accordance with the requirements of this TSA;

(c) Developer assigns its rights and obligations under this TSA in violation of this TSA; or

(d) Developer fails to perform any other obligation of Developer hereunder, and the failure to perform such other obligation continues for 30 days after TxDOT delivers notice thereof to Developer (or if Developer has begun diligently pursuing a cure of such failure within such 30 days and continues to diligently pursue such cure, then 90 days after TxDOT delivers notice thereof to Developer).

7.4 TxDOT Remedies for Developer Default. In the event of any Developer Default, TxDOT shall be entitled to exercise the following rights and remedies (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies):

(a) TxDOT shall be entitled to recover all losses and damages incurred as a result of such Developer Default;

(b) TxDOT may terminate this TSA, effective upon 180 days' prior notice by TxDOT to Developer; and

(c) TxDOT shall be entitled to all other rights and remedies available under this TSA, at Law or in equity (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies).

7.5 Interest on Late Payments. Any sum owing from one Party to the other that is not paid when due shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due and continuing until paid.

7.6 Limitation on Consequential Damages. Notwithstanding any other provision of this TSA and except as set forth in this Section 7.6, to the extent permitted by applicable Law, neither Party shall be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of this TSA, tort (including negligence) or any other theory of liability, and each Party releases the other Party from any such liability. The foregoing limitation on liability for consequential damages shall not apply to or limit any right of recovery either Party may have respecting the following:

(a) losses, damages, debts, obligations and liabilities (including defense costs) to the extent covered by the proceeds of insurance actually carried by or insuring the liable Party;

(b) losses arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;

(c) Developer's obligation to pay compensation to TxDOT under this TSA;

(d) transition costs incurred by Developer or TxDOT upon its proper exercise of a right to terminate this TSA;

(e) in the event of Developer's proper exercise of a right to terminate this TSA, costs Developer incurs to procure, hire, transition to and compensate a replacement service provider for comparable services for the remainder of the term of the CDA after termination of this TSA, to the extent the compensation exceeds that which would be owing to TxDOT for the remainder of the term of the CDA; *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 hereunder during the shorter of (i) five years or (ii) the balance of the unexpired term of this TSA as of the date of termination of this TSA;

(f) interest, late charges, fees, transaction fees and charges, penalties and similar charges that this TSA expressly states are due from one Party to the other Party; and

(g) any credits, deductions or offsets that this TSA expressly provides to one Party against amounts owing the other Party.

7.7 Mitigation of Damages. Each Party acknowledges its duty at law to mitigate damages arising out of the other Party's breach or failure to perform. Both Parties also shall use reasonable efforts to mitigate damages in the event this TSA is terminated pursuant to Section 7.10 or Section 8.1.

7.8 Dispute Resolution Procedures. Article 30 of the CDA, and the provisions of the CDA referenced therein, shall govern all disputes under this TSA and are hereby incorporated by reference as though set forth in full herein, except that references to "the CDA Documents" shall mean this TSA, references to "Claim" or "Dispute" shall mean disputes under this TSA, and other references specific to the CDA shall be similarly construed to refer to comparable terms under this TSA. This Section 7.8 shall survive expiration or earlier termination of this TSA and continue to apply to all disputes between the Parties arising out of this TSA.

7.9 Termination for Convenience. Developer may terminate this TSA for convenience, without further liability or penalty, upon 180 days' prior notice to TxDOT.

7.10 Termination by TxDOT. TxDOT may terminate this TSA, without further liability or penalty (except to the extent such termination gives rise to a Compensation Event under the CDA pursuant to subsection (r) of the definition of Compensation Event), upon 180 days' prior notice to TxDOT, if TxDOT ceases to provide the types of services set out in Article 3 generally for itself and other toll road operators. During such 180-day notice period prior to the termination of this TSA, TxDOT shall use reasonable efforts to assist Developer, if Developer so requests, in retaining a replacement services provider.

7.11 Termination for Certain Material Events. The Parties acknowledge that the scope of services included herein, and the itemization, calculation, and escalation of Transaction Fees set forth in Section 5.1, are predicated on the participation of HCTRA in that certain Interlocal Agreement among Transponder Issuers operating in the State of Texas, as amended. If HCTRA is no longer operating toll roads or charging tolls for use thereof, or if HCTRA is no longer a party to such agreement or a successor interoperability agreement with TxDOT, the Parties agree to negotiate in good faith for changes reasonably requested to this TSA by TxDOT to continue the provision of services hereunder, including changes to Transaction Fees and the scope of services, in light of such changed circumstances. Either Party may terminate this TSA, without further liability or penalty or Claim for any Compensation Event under the CDA, upon 180 days' prior notice to the other Party, if Developer and TxDOT are unable to agree upon requested changes to this TSA (each Party acting in its own discretion) within 60 days after TxDOT requests such a change.

7.12 Transition. If this TSA is terminated for any reason, until 180 days after termination of this TSA TxDOT shall use all commercially reasonable efforts, at its own cost and expense, to provide such assistance as may be requested by Developer to identify a replacement service provider, to facilitate the transition of services from TxDOT to the replacement service provider selected by Developer, and to avoid interruption in the provision of such services or any adverse impact on toll operations. To facilitate such transition, the Parties shall cooperate as set forth in Sections 7.12(a) through (e).

(a) The Parties shall cooperate with each other in order to prepare, on or prior to the first Service Commencement Date (or such later time mutually agreed to by the Parties in writing), a mutually acceptable transition plan (with each Party agreeing not to unreasonably withhold its approval or assent thereto) that sets forth protocols, procedures and terms for (i) the transition of collection and enforcement services and customer service for the Project from TxDOT to Developer or its designee following the expiration or earlier termination of this TSA for any reason, and (ii) the transfer of data from TxDOT to Developer or its designee upon the expiration or earlier termination of this TSA for any reason. The Parties will cooperate to update the transition plan once every two years (or annually if reasonably requested by either Party due to any change in circumstances).

(b) The plan for transfer of data will include TxDOT's delivery to Developer on or prior to the expiration or earlier termination of this TSA of (i) all Transponder Transactions and Video Transactions and related transaction data transmitted to TxDOT but for which tolls have not been collected and remitted to Developer prior to the expiration or earlier termination of this TSA, unless otherwise agreed upon in writing, and (ii) reports identifying all transactions on the Project received by TxDOT and occurring during the last five years of the Term prior to the expiration or termination date. Other than transaction data described above, in no event will the transition plan require TxDOT to disclose to Developer TxDOT's proprietary information or processes or customer information in violation of privacy laws or agreements with customers.

(c) Upon the expiration or earlier termination of this TSA for any reason, TxDOT will diligently assist and cooperate with Developer and Developer's designee to provide a smooth transition of toll collection and enforcement services, customer services and related services and transfer of data from TxDOT to Developer and Developer's designee, so that there is no gap or hiatus in the provision of such services or toll collection efforts for the Project. The Parties will carry out such transition and transfer pursuant to the transition plan developed pursuant to Section 7.12(a) and with the objective of accomplishing such transfer as quickly as possible without compromising customer service or toll collection. As part of such transition, TxDOT will transfer to Developer all the transaction data described in Section 7.12(b) and any other data identified in the transition plan, together with any information that TxDOT has relating to the transactions described in Section 7.12 (b)(i) that may reasonably assist Developer in the collection of tolls for such Transactions.

(d) TxDOT will continue to provide services as provided in this TSA until the performance of such services, functions, rights and responsibilities and the transaction data described in Section 7.12(b) and any other data identified in the transition plan are successfully transferred to Developer or its designee. Developer will use diligent efforts to enable such transfer in a manner that does not materially interfere with or disrupt TxDOT's operations regarding other projects. TxDOT will not engage in any action or make any statements to customers that would or could reasonably be expected to harm Developer's relations with such customers or their patronage of the Projects.

(e) Each Party shall bear its own costs and expenses in carrying out the transition of services and transfer of data[, except (i) as provided in Section 7.2(a) (subject to Sections 7.6 and 7.7) where the termination of the TSA is the result of a TxDOT Default and (ii) to the extent such termination gives rise to a Compensation Event under the CDA pursuant to subsection (r) of the definition of Compensation Event].

ARTICLE 8
SPECIAL PROVISIONS CONCERNING THE CDA

8.1 Termination of the CDA. This TSA shall terminate automatically, without notice, upon termination of the CDA without liability of either Party.

8.2 New TSA for Collateral Agent. If the CDA is terminated under the circumstances described in Section 2.4.8 of the Direct Agreement and the Collateral Agent (or its Substituted Entity) elects to enter into a New Agreement, then the Collateral Agent (or its Substituted Entity) may also elect to enter into a new tolling services agreement (the "**New TSA**") to replace this TSA for the remainder of the term of this New Agreement and otherwise on the terms, covenants and conditions contained in this TSA. Upon the execution by all parties and as conditions to the effectiveness of the New TSA, the Collateral Agent (or its Substituted Entity) shall:

(a) pay to TxDOT any and all sums that would be due under this TSA but for such termination;

(b) otherwise fully remedy any existing defaults by Developer Defaults under this TSA; *provided*, however, that with respect to any such Developer Defaults that cannot be cured until the Collateral Agent or Substituted Entity obtains possession of the Project, the Collateral Agent or Substituted Entity shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity, to cure such defaults, in any event not to exceed 180 days after the date it obtains possession; and

(c) without duplication of any amounts previously paid by Developer, the Collateral or Substituted Entity shall pay to TxDOT all reasonable costs and expenses incurred by TxDOT (and upon request, TxDOT will provide a documented statement of such costs and expenses) in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy proceeding, (iii) all compensation earned by TxDOT under the TSA during any period of possession of the Project by TxDOT, except to the extent recovered by TxDOT from Toll Revenues earned during such period of possession and (iv) the preparation, execution, and delivery of the New TSA.

The provisions of this Section 8.2 shall survive the termination of this TSA and shall continue in full force and effect thereafter to the same extent as if this Section 8.2 were a separate and independent contract made by TxDOT and the Collateral Agent or its Substituted Entity.

ARTICLE 9
MISCELLANEOUS

9.1 Assignment

(a) Developer may not assign this TSA except to its permitted assignee of its interests in the CDA (the permissibility of which shall be determined solely under the CDA).

(b) TxDOT acknowledges that this TSA is for the personal services of TxDOT. Accordingly, TxDOT may not assign this TSA except (i) with the prior consent of Developer, in Developer's discretion, or (ii) without Developer's consent, to any other Person that succeeds to (1) all the governmental powers and authority of TxDOT or (2) all the tolling service functions and operations of TxDOT in the State.

(c) No assignment shall relieve the assigning Party from any liability under this TSA arising prior to the effective date of assignment, or impair any of the other Party's rights or remedies due to the assigning Party's default occurring prior to the effective date of assignment.

(d) This TSA shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

9.2 Amendments. This TSA 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 TSA.

9.3 Waiver

(a) No waiver of any term, covenant or condition of this TSA shall be valid unless in writing and signed by the obligee Party.

(b) The exercise by a Party of any right or remedy provided under this TSA 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 TSA shall be deemed to be a waiver of any other or subsequent right or remedy under this TSA. 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.

(c) Except as provided otherwise in this TSA, 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 TSA.

(d) Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this TSA 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 this TSA 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 dispute hereunder.

(e) 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 TSA, 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 (i) the service of any notice, any dispute resolution procedures or final judgment, (ii) any time within which the other Party is required to perform any obligation or (iii) any other notice or demand.

9.4 Independent Contractor. TxDOT is an independent contractor to Developer hereunder, and nothing contained herein shall be construed as constituting any relationship with Developer other than independent contractor. Nothing herein 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.

9.5 Authorized 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 this TSA (each an "**Authorized Representative**"). Exhibit A to this TSA provides the initial Authorized Representative designations. A Party may change such designations by subsequent notice delivered to the other Party.

9.6 Limitation on Third Party Beneficiaries. It is not intended by any of the provisions of this TSA 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 provisions for the protection of the Collateral Agent or its Substituted Entity in Section 8.2) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 9.6, the duties, obligations and responsibilities of the Parties to this TSA with respect to third parties shall remain as imposed by Law.

9.7 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 TSA. 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 TSA, and shall otherwise provide notice in such form and within such period as is required by Law.

9.8 Governing Law. This TSA shall be governed by and construed in accordance with the laws of the State of Texas.

9.9 Notices and Communications. Notices hereunder shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

If to Developer: [●]

If to TxDOT: [●]

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others. All notices and other communications required or permitted under this TSA that are addressed as provided in this Section 9.9 are effective upon delivery, if delivered personally or by overnight mail, facsimile or electronic mail and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

9.10 Counterparts. This TSA may be executed in one or more counterparts, all of which together shall be deemed an original.

Signature Page Immediately Follows

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Tolling Services Agreement on the date first written above.

Developer	**TxDOT**
[●]	**Texas Department of Transportation**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]

EXHIBIT A
INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT's Initial Authorized Representative

[●]

Developer's Initial Authorized Representative

[●]

EXHIBIT B
FORM OF JOINDER AGREEMENT

*** * * * ***

JOINDER AGREEMENT

This Joinder Agreement is entered into and effective as of [●], by and between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and [●], a [●] limited liability company ("**Developer**"), and The Bank of New York Mellon Trust Company, N.A., as Custodian (the "**Custodian**").

RECITALS

A. TxDOT and Developer have entered into that Comprehensive Development Agreement (State Highway 288 Toll Lanes in Harris County) dated as of [●] (the "**CDA**"), pursuant to which TxDOT confers upon Developer certain rights to finance, develop, design, acquire, construct, use, toll, operate and maintain the project described therein (such facility, the "**SH 288 Facility**").

B. TxDOT and Developer have entered into that Tolling Services Agreement (State Highway 288 Toll Lanes in Harris County) dated as of [●] (the "**TSA**"), pursuant to which Developer has engaged TxDOT to provide, and TxDOT has agreed to provide, certain tolling services to Developer.

C. TxDOT and the Custodian have entered into the Master Lockbox and Custodial Account Agreement dated as of November 9, 2007 (the "**Master Lockbox and Custodial Account Agreement**");

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

AGREEMENT

1. Definitions. Capitalized terms used but not defined in this Joinder Agreement have the meanings ascribed to them in the Master Lockbox and Custodial Account Agreement.

2. Designation of Developer as Beneficiary. TxDOT hereby designates Developer as a "Beneficiary" under the Master Lockbox and Custodial Account Agreement with respect to the SH 288 Facility and toll revenues arising from the SH 288 Facility which are at any time held by the Custodian under the Master Lockbox and Custodial Account Agreement and which, under the terms of the CDA, TxDOT is obligated to direct to be paid to Developer, and the Custodian hereby acknowledges said designation, with the full rights, powers and benefits granted to a "Beneficiary" thereunder. If Developer terminates TxDOT's clearinghouse and toll collection and enforcement services or TxDOT ceases to provide clearinghouse and toll collection and enforcement services for Developer, all as provided in the TSA, Developer shall deliver notice to the Custodian specifying the date Developer terminated TxDOT's services or the date TxDOT ceased to provide such services for Developer under the TSA. Developer's rights as a "Beneficiary" under the Master Lockbox and Custodial Account Agreement shall continue so long as the TSA remains in effect.

3. Agreements of TxDOT. TxDOT hereby covenants and agrees as follows:

(a) TxDOT shall comply with the terms of the Master Lockbox and Custodial Account Agreement and perform the obligations of TxDOT specified in the Master Lockbox and Custodial Account Agreement, including without limitation the obligation of TxDOT to direct the Custodian pay any amount that is payable for the account of Developer to Developer.

(b) TxDOT shall enforce the Master Lockbox and Custodial Account Agreement in accordance with its terms and provisions and will not amend, modify or waive any of the terms and provisions thereof which would materially adversely affect the rights of Developer as a "Beneficiary" thereunder.

(c) TxDOT shall not terminate or allow to expire in accordance with its terms the Master Lockbox and Custodial Account Agreement prior to the expiration or earlier termination of the TSA unless TxDOT has executed a new Master Lockbox and Custodial Account Agreement with a replacement custodian on substantially the same terms and conditions as the Master Lockbox and Custodial Account Agreement.

(d) TxDOT shall deliver to Developer a copy of all notices, certificates, and instructions delivered by or on behalf of TxDOT to the Custodian as and when delivered to the Custodian.

4. Agreements of Developer. Developer agrees that it shall have no greater right or interest in and to the funds and accounts created pursuant to the Master Custodial Account Agreement than is provided in the TSA.

5. Agreements of the Custodian. The Custodian hereby covenants and agrees as follows:

(a) The Custodian acknowledges that (i) Developer is a "Beneficiary" as that term is used in the Master Lockbox and Custodial Account Agreement entitled to the rights of a Beneficiary as provided thereunder and (ii) Joinder Agreement constitutes a "Designation Agreement" under the Master Lockbox and Custodial Account Agreement.

(b) The Custodian hereby acknowledges that Developer may from time to time enter into certain Security Documents (as defined in the CDA) pursuant to which Developer has pledged its rights as a "Beneficiary" to secure its various obligations under or related to such Security Documents. The Custodian acknowledges that the secured party thereunder acts as agent for various Persons in connection with the exercise of such Person's rights under the Security Documents.

(c) The Custodian will transfer amounts required to be transferred to the Beneficiary under the Master Lockbox and Custodial Account Agreement to Developer or its designee as follows or as otherwise from time to time instructed by Developer or its designee:

[*account description and wire instructions*]

6. Agreements as to Toll Revenues. Each of TxDOT, the Custodian and Developer hereby acknowledge and agree as follows:

(a) The Master Lockbox and Custodial Account Agreement and arrangements thereunder are intended to ensure that toll revenues from operation of the SH 288 Facility do not come into the possession of, or under the control of, TxDOT, the State of Texas, or any other governmental entity of the State of Texas, or become the assets or property of TxDOT, the State of Texas or any such other governmental entity that is subject to constraints imposed by principles of legislative or administrative appropriation, or to treatment as public funds unless and until the portion of such toll revenues that

TxDOT is entitled to receive pursuant to the terms of the CDA or TSA are actually distributed to TxDOT from funds deposited into the Master Custodial Accounts.

(b) All revenue that accrues from the use of the SH 288 Facility prior to the expiration or earlier termination of the CDA that would constitute Toll Revenue if received by Developer, either directly or indirectly, shall become the property of Developer when it accrues, but the foregoing shall not reduce TxDOT's right to receive fees and other amounts in accordance with the terms of the TSA.

(c) The Custodian will have dominion and control of all toll revenues from operation of the SH 288 Facility for purposes of crediting and transferring such toll revenues from use of the SH 288 Facility to Developer.

(d) If for any reason TxDOT receives any payment for any use of the SH 288 Facility prior to the expiration or earlier termination of the CDA, all toll revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent for Developer and shall not constitute funds of TxDOT or the State of Texas, and TxDOT agrees to promptly remit such payments to the Custodian for handling in accordance with the terms of the Master Lockbox and Custodial Account Agreement.

7. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8. Counterparts. This Joinder Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

Signature Page Immediately Follows

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Joinder Agreement on the date first written above.

TxDOT

Texas Department of Transportation

By: _____
Name: [●]
Title: [●]

Developer

[●]

By: _____
Name: [●]
Title: [●]

Custodian

The Bank of New York Mellon Trust Company, N.A.

By: _____
Name: [●]
Title: [●]

EXHIBIT 12
FEDERAL REQUIREMENTS

Attachment 1 Federal Requirements for Federal-Aid Construction Projects

Attachment 2 FHWA Form 1273

Attachment 3 Federal Prevailing Wage Rate

Attachment 4 Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

Attachment 5 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

Attachment 6 Certification Regarding Use of Contract Funds for Lobbying

Attachment 7 Compliance with Buy America Requirements

Attachment 8 Certification of Nondiscrimination in Employment

Attachment 9 On-the-Job Training Program for Design-Build and Comprehensive Development Agreement Projects

Attachment 10 Important Notice to Contractors

ATTACHMENT 1 TO EXHIBIT 12
FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 12. Whenever in said required contract provisions references are made to:

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

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

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

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

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

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

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

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under

penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

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

CONVICT PRODUCED MATERIALS

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

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

ACCESS TO RECORDS

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

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

ATTACHMENT 2 TO EXHIBIT 12
FHWA FORM 1273

ATTACHED

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by

reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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

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

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

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

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

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

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

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

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

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

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

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

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

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

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

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

6. Training and Promotion:

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women

and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

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

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

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

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

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

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits

under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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

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

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed

unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and

liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the

quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

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

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

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

* * * * *

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

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

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

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of

Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 3 TO EXHIBIT 12
FEDERAL PREVAILING WAGE RATE

ATTACHED

The wage rates listed are those predetermined by the Secretary of Labor and State Statue to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-3-2014

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/3/14	ZONE TX08 1/3/14	ZONE TX11 1/3/14	ZONE TX12 1/3/14	ZONE TX14 1/3/14	ZONE TX16 1/3/14	ZONE TX18 1/3/14	ZONE TX34 1/3/14	ZONE TX35 1/4/13	ZONE TX37 1/3/14	ZONE TX38 1/3/14	ZONE TX40 1/3/14	ZONE TX41 1/3/14	ZONE TX54 1/3/14	ZONE TX56 1/3/14	ZONE TX63 1/3/14
1428	Agricultural Tractor Operator						$12.69					$12.35			$11.75		
1300	Asphalt Distributor Operator	$14.87	$13.48	$13.88			$15.55	$15.72	$13.28	$15.32	$15.62	$14.36	$14.25	$14.03	$13.75	$14.06	$14.40
1303	Asphalt Paving Machine Operator	$13.40	$12.25	$12.35	$13.87		$14.36	$14.20	$13.26	$13.99	$14.68	$12.92	$13.44	$12.53	$14.00	$14.32	$12.99
1106	Asphalt Raker	$12.28	$10.61	$12.02	$14.21		$12.12	$11.64	$11.44	$12.69	$12.05	$11.34	$11.67	$11.40	$12.59	$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	$11.21	$10.33	$10.08			$11.04	$11.62		$11.74	$11.41	$10.30		$10.23	$10.60	$12.68	$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	$13.55	$12.46	$13.16	$12.85		$12.56	$12.77	$12.44	$14.12	$13.04	$13.38		$12.80	$12.79	$12.98	$13.32
1318	Concrete Pavement Finishing Machine Operator						$15.48			$16.05		$19.31				$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											$16.34				$11.71	
1333	Concrete Saw Operator									$14.48	$17.33					$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						$18.36			$18.12	$18.04	$20.21			$18.63	$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	$16.82	$14.39	$13.85			$15.87			$17.27		$14.67			$16.42	$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						$19.38			$20.52		$17.49			$25.13	$15.80	
1306	Crawler Tractor Operator	$13.96	$16.63	$13.62			$15.67			$14.07	$13.15	$13.38			$14.60	$13.68	$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						$11.67										
1445	Directional Drilling Operator						$17.24										
1139	Electrician	$20.96		$19.87			$26.35		$20.27	$19.80		$20.92				$27.11	
1347	Excavator Operator, 50,000 pounds or less	$13.46	$12.56	$13.67			$12.88	$14.38	$13.49	$17.19		$13.88			$14.09	$12.71	$14.42
1348	Excavator Operator, Over 50,000 pounds		$15.23	$13.52			$17.71			$16.99	$18.80	$16.22				$14.53	
1150	Flagger	$9.30	$9.10	$8.50		$8.81	$9.45	$8.70		$10.06	$9.71	$9.03		$9.08	$9.90	$10.33	$8.10
1151	Form Builder/Setter, Structures	$13.52	$12.30	$13.38	$12.91	$12.71	$12.87	$12.38	$12.26	$13.84	$12.98	$13.07	$13.61	$12.82	$14.73	$12.23	$12.25
1160	Form Setter, Paving & Curb	$12.36	$12.16	$13.93	$11.83	$10.71	$12.94			$13.16	$12.54	$11.33	$10.69		$13.33	$12.34	
1360	Foundation Drill Operator, Crawler Mounted									$17.99						$17.43	
1363	Foundation Drill Operator, Truck Mounted		$16.86	$22.05			$16.93			$21.07	$20.20	$20.76		$17.54	$21.39	$15.89	
1369	Front End Loader Operator, 3 CY or Less	$12.28	$13.49	$13.40			$13.04	$13.15	$13.29	$13.69	$12.64	$12.89			$13.51	$13.32	$12.17
1372	Front End Loader Operator, Over 3 CY	$12.77	$13.69	$12.33			$13.21	$12.86	$13.57	$14.72	$13.75	$12.32			$13.19	$13.17	
1329	Joint Sealer																
1172	Laborer, Common	$10.30	$9.86	$10.08	$10.51	$10.71	$10.50	$10.24	$10.58	$10.72	$10.45	$10.30	$10.25	$10.03	$10.54	$11.02	$10.15
1175	Laborer, Utility	$11.80	$11.53	$12.70	$12.17	$11.81	$12.27	$12.11	$11.33	$12.32	$11.80	$11.53	$11.23	$11.50	$11.95	$11.73	$12.37
1346	Loader/Backhoe Operator	$14.18	$12.77	$12.97	$15.68		$14.12			$15.18	$13.58	$12.87		$13.21	$14.13	$14.29	
1187	Mechanic	$20.14	$15.47	$17.47			$17.10			$17.68	$18.94	$18.58		$16.61	$18.46	$16.96	
1380	Milling Machine Operator	$15.54	$14.64	$12.22			$14.18			$14.32	$14.35	$12.86			$14.75	$13.53	

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/3/14	ZONE TX08 1/3/14	ZONE TX11 1/3/14	ZONE TX12 1/3/14	ZONE TX14 1/3/14	ZONE TX16 1/3/14	ZONE TX18 1/3/14	ZONE TX34 1/3/14	ZONE TX35 1/4/13	ZONE TX37 1/3/14	ZONE TX38 1/3/14	ZONE TX40 1/3/14	ZONE TX41 1/3/14	ZONE TX54 1/3/14	ZONE TX56 1/3/14	ZONE TX63 1/3/14
1390	Motor Grader Operator, Fine Grade	$17.49	$16.52	$16.88			$18.51	$16.69	$16.13	$17.19	$18.35	$17.07	$17.74	$17.47	$17.08	$15.69	$20.01
1393	Motor Grader Operator, Rough	$16.15	$14.62	$15.83		$17.07	$14.63	$18.50		$16.02	$16.44	$15.12		$14.47	$17.39	$14.23	$15.53
1413	Off Road Hauler			$10.08			$11.88			$12.25		$12.23			$13.00	$14.60	
1196	Painter, Structures						$18.34						$21.29			$18.62	
1396	Pavement Marking Machine Operator	$16.42		$13.10			$19.17	$12.01		$13.63	$14.60	$13.17		$16.65	$10.54	$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															$14.95	
1205	Pipelayer		$11.87	$14.64			$12.79		$11.37	$13.24	$12.66	$13.24	$11.17	$11.67		$12.12	
1384	Reclaimer/Pulverizer Operator	$12.85					$12.88			$11.01		$10.46					
1500	Reinforcing Steel Worker	$13.50	$14.07	$17.53			$14.00			$16.18	$12.74	$15.83		$17.10		$15.15	
1402	Roller Operator, Asphalt	$10.95		$11.96			$12.78	$11.61		$13.08	$12.36	$11.68			$11.71	$11.95	$11.50
1405	Roller Operator, Other	$10.36		$10.44			$10.50	$11.64		$11.51	$10.59	$10.30		$12.04	$12.85	$11.57	
1411	Scraper Operator	$10.61	$11.07	$10.85			$12.27		$11.12	$12.96	$11.88	$12.43		$11.22	$13.95	$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	$13.98	$12.34	$14.11			$14.51	$15.56	$13.44	$14.58	$14.31	$13.83		$12.43	$13.72	$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									$15.96							
1515	Spreader Box Operator	$12.60		$13.12			$14.04			$14.73	$13.84	$13.68		$13.45	$11.83	$13.58	
1705	Structural Steel Welder															$12.85	
1509	Structural Steel Worker						$19.29									$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						$16.00										
1440	Trenching Machine Operator, Heavy						$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	$14.46	$13.63	$13.41	$15.00	$15.93	$15.66			$16.24	$16.39	$14.30	$16.62	$15.63	$14.28	$16.03	
1612	Truck Driver Transit-Mix									$14.14							
1600	Truck Driver, Single Axle	$12.74	$10.82	$10.75			$11.79	$13.53	$13.16	$12.31	$13.40	$10.30	$11.61		$11.97	$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	$11.33	$14.53	$11.95			$11.68		$14.06	$12.62	$11.45	$12.28		$13.08	$11.68	$11.48	$11.10
1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	$12.49	$12.12	$12.50			$12.81	$13.16		$12.86	$16.22	$12.50			$13.80	$12.27	
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		$14.02				$15.97		$13.74	$14.84					$13.78		
1520	Work Zone Barricade Servicer	$10.30	$12.88	$11.46	$11.70		$11.85	$10.77		$11.68	$12.20	$11.22	$11.51	$12.96	$10.54	$11.67	

Notes:

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week.
The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.

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

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

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

ATTACHMENT 4 TO EXHIBIT 12
SPECIAL PROVISION
000—006
Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

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

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

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

   d. "Minority" includes:

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

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

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

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

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

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an

approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

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

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

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

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

    c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by

the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

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

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

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

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

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

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 5 TO EXHIBIT 12
SPECIAL PROVISION
000—004
Notice of Requirement for Affirmative Action
to Ensure Equal Employment Opportunity
(Executive Order 11246)

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

2. **Goals.**

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

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

Goals for minority participation in each trade (percent)	**Goals for female participation in each trade (percent)**
See Table 1	6.9

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

d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR

60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

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

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

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

Table 1

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

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

County	Goals for Minority Participation	County	Goals for Minority Participation
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

ATTACHMENT 6 TO EXHIBIT 12
CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

ATTACHMENT 7 TO EXHIBIT 12
COMPLIANCE WITH BUY AMERICA REQUIREMENTS

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

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

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

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

BUY AMERICA CERTIFICATE

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

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

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

C. At Developer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

ATTACHMENT 8 TO EXHIBIT 12
2004 SPECIFICATIONS
SPECIAL PROVISION
000—009
Certification of Nondiscrimination in Employment

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

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

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

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

ATTACHMENT 9 TO EXHIBIT 12
SPECIAL PROVISION
On-the-Job Training Program for
Design-Build and Comprehensive Development Agreement Projects

SEE EXHIBIT 13B

ATTACHMENT 10 TO EXHIBIT 12

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

SPECIAL PROVISION
000—2711
Important Notice to Contractors

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

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

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

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

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

EXHIBIT 13
DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS

Exhibit 13A DBE Special Provision

Exhibit 13B On-the-Job Training Program

EXHIBIT 13A
DBE SPECIAL PROVISION

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

For purposes of this Special Provision, the term "**contract**" means the Agreement (referred to sometimes as the "**CDA**"), the term "**Bidder**" means the selected Proposer for the Project (referred to sometimes as the "**CDA project**"), and the term "**Contractor**" means Developer under the Agreement.

A. Disadvantaged Business Enterprise in Federal-Aid Construction

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

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

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

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

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

2. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

l. "**Texas Unified Certification Program**" or "**TUCP**" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by

Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

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

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

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

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

(4) Schedule for submission of DBE commitment agreements (using Form No. SMS. 4901), based on Bidder's initial project schedule; *provided*, *however*, that (a) DBE commitment agreements for design work and other professional services must be submitted at least 30 days prior to commencement of design work or other professional services for the applicable segment or phase of work under the CDA; and (b) DBE commitment agreements for construction subcontracts must be submitted at least 30 days prior to commencement of construction for the applicable segment or phase of the project under the CDA;

(5) Detailed description of (a) good faith efforts the Bidder has exercised to identify DBEs and obtain commitment agreements prior to the date of submission of the DBE Performance Plan; and (b) good faith efforts that will be exercised by the Contractor following execution of the CDA to achieve the DBE participation goal for the project; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Eligibility of DBEs

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

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

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

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

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

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

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

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

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

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

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

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

(3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and

supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least one fully licensed, insured, and operational truck used on the contract.

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

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

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

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

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

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

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (Definition of a DBE manufacturer found at Section A.5.c.(1) of this provision.)

For purposes of this Section A.5.c.(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

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

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

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

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

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

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

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

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

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

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

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

6. Records and Reports

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due

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

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

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

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

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

7. Compliance of Contractor

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

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

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

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

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

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

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

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

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

EXHIBIT 13B
ON-THE-JOB TRAINING PROGRAM

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

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

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

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

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

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

3. The OJT program trainee goal for this project is [●] trainees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 14
DEVELOPER'S DBE PERFORMANCE PLAN

[TO BE ATTACHED FROM DEVELOPER'S PROPOSAL]

EXHIBIT 15
DEVELOPER'S JOB TRAINING / SMALL BUSINESS MENTORING PLAN

[TO BE ATTACHED FROM DEVELOPER'S PROPOSAL]

EXHIBIT 16
INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction. At all times during the period from the commencement of Construction Work until the Last Service Commencement Date for the Initial Configuration and during any other period in which other construction work is in progress during the Operating Period, Developer shall, or shall require the Design-Build Contractor, to procure and keep in force a policy of builder's risk insurance as specified below.

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

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, and (ii) unless covered by property insurance pursuant to Section 2 of this Exhibit 16, all existing property and improvements that are within the construction work zone or are or will be affected by the Construction Work.

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

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

(e) To the extent available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof), and (xi) delayed opening coverage in the amount of potential lost toll revenue for a period of not less than six months.

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

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

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

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

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

(d) Developer shall be the named insured on the policy. TxDOT shall be identified as an additional insured as its interest appears. Developer also may, but is not obligated to, include Contractors as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. Developer may name itself or the Collateral Agent as loss payee under the policy. TxDOT shall be named as additional loss payee as its interest may appear; *provided* that during all portions of the last five years of the Term that there are no outstanding Security Documents, TxDOT shall be named as the loss payee. If TxDOT is the loss payee and receives proceeds of such insurance for insured loss or damage, TxDOT shall hold such proceeds available to pay and reimburse Developer for reasonable costs it incurs to repair and replace the loss or damage.

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

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

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

(a) Such Insurance Policy shall insure against interruption or loss of Toll Revenues resulting from physical loss or damage to any portion of the Project caused by occurrence of any risk which is required to be insured under the all risk property insurance specified in Section 2 of this Exhibit 16.

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

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

(d) The policy shall provide a deductible or self-insured retention per occurrence not exceeding the first 30 days of loss following the date of interruption.

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

4. Commercial General Liability Insurance. At all times during the Term, Developer shall procure and keep in force in its own name, or cause to be procured and kept in force in its name, commercial general liability insurance as specified below.

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

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d) of this Exhibit 16, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages: (i) contractual liability; (ii) premises/operations; (iii) independent contractors; (iv) products and completed operations (with acknowledgement that the Project constitutes the premises and not a product); (v) broad form property damage (including nuisance; interference with rights of way, water, light or air; false arrest; detainment; and broader definition of "damage"); (vi) hazards commonly referred to as "XCU", including explosion, collapse and underground property damage; (vii) fellow employee coverage for supervisory personnel; (viii) incidental medical malpractice; (ix) no exclusion for work performed within 50 feet of a railroad; (x) broad named insured endorsement; and (xii) non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 6 of this Exhibit 16. The policy shall contain no exclusion for claims arising from professional services, including engineering, architecture and surveying, with regard to any claims related to Developer's supervision, coordination, management, scheduling of the project or other similar services or the products and completed operations coverage. In lieu of complying with this requirement, Developer may show proof of Contractor's Professional Liability Insurance with a limit of at least $10,000,000 per claim and aggregate. If this requirement is met through provision of Contractor's Professional Liability Insurance, such coverage shall be carried for the period of the project and for 5 years thereafter, however, in no event shall this requirement extend beyond10 years total.

(c) The policy shall have limits of not less than $25,000,000 per occurrence and in the aggregate per policy period. If such limits are shared by all insured and additional insured parties, the policy shall have limits of not less than $50,000,000. The policy shall reinstate annually.

(d) Developer and TxDOT shall be the named insureds, provided that the scope of coverage for TxDOT and the Indemnified Parties shall be limited to acts, omissions and activities relating to the Project, the CDA Documents and the Principal Project Documents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insured. The other Indemnified Parties shall be Additional Insureds.

(e) The policy shall provide one of the following, as Developer selects: (i) a deductible or self-insured retention not exceeding $250,000 per occurrence; or (ii) a deductible (but not self-insured retention) of $500,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis (meaning that the insurer meets the third party claim in full and recovers the deductible from Developer).

5. [RESERVED]

6. Automobile Liability Insurance. At all times during the Term, Developer shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

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

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

(c) Developer's policy shall have a limit per policy period of not less than $25,000,000 for any one claim and in the aggregate.

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

7. Pollution Liability Insurance. At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by the performance of Work or by other activities that occur on the Project.

(b) Developer shall be the named insured under such policy. The Indemnified Parties shall be identified as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. The "insured versus insured" exclusion shall be deleted, so that the policy will insure Developer against, and respond to, pollution liability claims and actions of TxDOT against Developer.

(c) The policy shall have a limit of not less than $5,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

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

8. Professional Liability Insurance. At all times during the Term that professional services are rendered respecting design and construction of the Project until the first to occur of (x) five years after the professional services have concluded for the Project or (y) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the Project, Developer shall cause the Design-Build Contractor or its lead design subcontractor (in the case of the Design Work) and each Contractor that is under direct contract with Developer and provides professional services to Developer respecting such design and construction (in the case of any other design or engineering work) to procure and keep in force professional liability insurance as specified below. Such insurance requirements also shall apply in like manner to professional services for any Renewal Work or Upgrades having an estimated cost in excess of $10,000,000. Developer may satisfy such insurance via a Project policy covering all the foregoing providers of professional services, provided no "insured versus insured" or similar exclusion precludes coverage of professionals for claims made by Developer or TxDOT or their respective successors or assigns.

(a) Each policy shall provide coverage of liability of the party performing the professional services arising out of any negligent act, error or omission in the performance of professional services or activities for the Project.

(b) Each policy shall have a limit of not less than $10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

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

Developer shall cause each other Contractor that provides professional services to procure and keep in force professional liability insurance in the amounts set forth in the chart below. Such policy need not be Project-specific or include a tail period for making claims, and shall include a commercially reasonable deductible.

Estimated Contract Value	Professional Liability Limits Required
$10,000,000 or greater	$10,000,000 per occurrence and aggregate
$5,000,000 to $9,999,999	$5,000,000 per occurrence and aggregate
$2,000,000 to $4,999,999	$2,000,000 per occurrence and aggregate
Less than $2,000,000	$1,000,000 per occurrence and aggregate

9. Workers' Compensation Insurance. At all times when work is being performed by any employee of Developer, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer shall be the named insured on these policies. Such policy need not be Project-specific. The workers' compensation Insurance Policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

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

10. Employer's Liability Insurance. At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

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

(b) Developer shall be the named insured.

(c) The policy shall have a limit of not less than $25,000,000 per accident and in the aggregate per policy period.

(d) Such policy need not be Project-specific.

11. Railroad Protective Liability Insurance. Developer shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with Work across, under or adjacent to it's the railroad's tracks or railroad right-of-way. In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the Work, Developer shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements. The railroad shall be the named insured on any such policy.

12. Contractors' Insurance

(a) At all times during the Term, Developer shall cause each Contractor that performs Work on the Site to provide commercial general liability, worker's compensation (statutory) and employer's liability, and automobile liability insurance as required below, unless such contractors are covered under a Developer or Design-Build Contractor provided project insurance program. Developer shall cause each such Contractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Contractor's commercial general liability and automobile liability Insurance Policies. Such insurance need not be Project-specific unless specified below and TxDOT shall have the right to contact the Contractors directly in order to verify the required coverage.

Estimated Contract Value	**Minimum Limits for Commercial General Liability/ Automobile Liability/ Employer's Liability**
$100,000,000 or greater	$25,000,000 per occurrence and aggregate
$25,000,000 to $99,999,999	$15,000,000 per occurrence and aggregate
$10,000,000 to $24,999,999	$10,000,000 per occurrence and aggregate
Less than $10,000,000	$5,000,000 per occurrence and aggregate

(b) Contractors shall be allowed to meet the limit requirements through any combination of primary and excess/umbrella liability insurance. All primary commercial general liability insurance policies shall include a provision that the aggregate limit shall apply on a per project basis. Each such policy shall be primary and non-contributory and include a waiver of subrogation.

EXHIBIT 17
FORM OF PAYMENT AND PERFORMANCE BONDS

Exhibit 17A Form of Performance Bond

Exhibit 17B Form of Payment Bond

EXHIBIT 17A
FORM OF PERFORMANCE BOND

*** * * * ***

Bond No. _____

WHEREAS, the Texas Department of Transportation ("**Obligee**"), has awarded to [●], a [●] ("**Principal**"), a Comprehensive Development Agreement for the SH 288 Toll Lanes Project in Harris County, duly executed and delivered as of [●] (the "**Agreement**"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Agreement, Principal is required to furnish a bond (this "**Bond**") guaranteeing the faithful performance of its obligations under the CDA Documents.

NOW, THEREFORE, Principal and [●], a [●] ("**Surety**"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $[●], subject to increase in accordance with the NTP2 Rider attached hereto (the "**Bonded Sum**"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the CDA Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

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

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

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the CDA Documents, as they may be amended and supplemented, including but not limited to, its liability for liquidated damages as specified in the CDA Documents, but not to exceed the Bonded Sum.

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

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

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

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Agreement, and pay to the Obligee the amount of damages as described in Paragraph 5 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

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

4. If Surety does not proceed as provided in Paragraph 3 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 3.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

5. After the Obligee has terminated the Principal's right to complete the Agreement, and if Surety elects to act under Subparagraph 3.a, 3.b or 3.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Agreement, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Agreement. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the Agreement, Surety is obligated without duplication for:

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

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 3 of this Bond; and

c. liquidated damages under the Agreement.

6. No alteration, modification or supplement to the CDA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT Changes, without the Surety's prior written consent thereto having been obtained, does not increase the cost of Construction Work by more than $[●] [***Insert amount that is 10% of the cost of Construction Work***]. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

7. Correspondence or claims relating to this Bond should be sent to Surety at the following address: [●]

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

Signature Page Immediately Follows

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of [●].

Principal	**Surety**
[●]	**[●]**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]
(Seal)	(Seal)

[*Add Appropriate Surety Acknowledgments*]

	Surety
_____	By: _____
Or Secretary Attest	Name: [●]
	Title: [●]
	Address: [●]

NTP2 RIDER

To be attached to and form a part of:

Bond No. _____

Type of Bond: Performance Bond

Dated Effective: [●]

By: [●], as Principal

And by: [●], as Surety

In favor of: Texas Department of Transportation, as Obligee

In consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of $[●] [***100% of the cost of Construction Work***] effective upon issuance by the Obligee of NTP2 under the Agreement.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective as of [●].

Signed and Sealed:

Principal	**Surety**
[●]	**[●]**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]
(Seal)	(Seal)

EXHIBIT 17B
FORM OF PAYMENT BOND

*** * * * ***

Bond No. _____

WHEREAS, the Texas Department of Transportation ("**Obligee**"), has awarded to [●], a [●] ("**Principal**"), a Comprehensive Development Agreement for the SH 288 Toll Lanes Project in Harris County, duly executed and delivered as of [●] (the "**Agreement**"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Agreement, Principal is required to furnish a bond (this "**Bond**") guaranteeing payment of claims by Contractors and Suppliers.

NOW, THEREFORE, Principal and [●], a [●] ("**Surety**"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $[●], subject to increase in accordance with the NTP2 Rider attached hereto (the "**Bonded Sum**"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT if Principal shall fail to pay any valid claims by Contractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

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

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

2. No alteration, modification or supplement to the CDA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT Changes without the Surety's prior written consent thereto having been obtained, does not increase the cost of Construction Work by more than $[●] [***Insert amount that is 10% of the cost of Construction Work***]. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT Changes in excess of such amount.

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

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

Signature Page Immediately Follows

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of [●].

Principal	**Surety**
[●]	**[●]**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]
(Seal)	(Seal)

[*Add Appropriate Surety Acknowledgments*]

	Surety
_____	By: _____
Or Secretary Attest	Name: [●]
	Title: [●]
	Address: [●]

NTP2 RIDER

To be attached to and form a part of:

Bond No. _____

Type of Bond: Payment Bond

Dated Effective: [●]

By: [●], as Principal

And by: [●], as Surety

In favor of: Texas Department of Transportation, as Obligee

In consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

The Bonded Sum hereunder shall increase to the amount of $[●] [***100% of the cost of Construction Work***] effective upon issuance by the Obligee of NTP2 under the Agreement.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective as of [●].

Signed and Sealed:

Principal	**Surety**
[●]	**[●]**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]
(Seal)	(Seal)

EXHIBIT 18
LANE RENTAL CHARGES; NONCOMPLIANCE EVENTS

TABLE 1
LANE RENTAL CHARGES

Number of General Purpose Lanes Closed or Reduced in Width Below Minimum	Period A (Weekday AM Peak)	Period B (Weekday PM Peak)	Period C (Weekday Off Peak)	Period D (Weekend Peak)	Period E (Late Night)
Northbound – Section 1 (Harris County Link to IH 610)					
1 Lane Closure	$21,000	$100	$100	$250	$50
2 Lane Closures	$132,000	$13,000	$13,000	$25,000	$50
Northbound – Section 2 (IH 610 to US 59)					
1 Lane Closure	$1,500	$100	$100	$100	$0
2 Lane Closures	$33,000	$200	$200	$350	$50
3 Lane Closures	$177,000	$19,000	$19,000	$41,000	$50
Southbound – Section 1 (Harris County Link to IH 610)					
1 Lane Closure	$100	$8,000	$100	$100	$50
2 Lane Closures	$13,000	$103,000	$13,000	$30,000	$50
Southbound – Section 2 (IH 610 to US 59)					
1 Lane Closure	$100	$150	$100	$0	$0
2 Lane Closures	$200	$1,500	$200	$200	$50
3 Lane Closures	$3,600	$16,000	$3,000	$9,000	$50

The hours that apply to each period are as follows:

- Period A: Monday through Friday, 5:00 AM to 9:00 AM
- Period B: Monday through Friday, 3:00 PM to 9:00 PM
- Period C: Monday through Friday, 9:00 AM to 3: 00 PM
- Period D: Saturday and Sunday, 10:00 AM to 9:00 PM
- Period E: Sunday through Thursday, 9:00 PM to 5:00 AM; and
  Friday through Saturday, 9:00 PM to 10:00 AM

TABLE 2
NONCOMPLIANCE EVENTS AND POINTS

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
1	General	Breach Notification	Notify TxDOT and Independent Engineer of the occurrence of any breach or failure specified in this Attachment in accordance with Section 28.1 of the Agreement.	2	C	None
2	Contracting and Labor Practices	Written Ethical Policies	Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 23.7 of the Agreement.	2	B	30 Days
3	Contracting and Labor Practices	DBE Plan Compliance	Comply with the requirements of Section 23.9 of the Agreement with respect to the Disadvantaged Business Enterprise provisions.	2	A	30 Days
4	Project Management	Contractors	Comply with the requirements of Section 23.2.1 of the Agreement.	4	A	7 Days
5	Project Management	Inspection	Comply with a requirement of any Technical Provision Section or the Agreement with regard to inspection, except where provided elsewhere in this Attachment 1.	2	B	2 Days
6	Project Management	Key Personnel	Comply with a requirement with regard to Key Personnel of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	2	B	14 Days
7	Project Management	Quality Management	Establish, maintain, update or comply with any requirement of a Quality Management Plan in accordance with Section 22.1 of the Agreement of Section 2.2 of the Technical Provisions.	2	A	7 Days
8	Project Management	Safety	Observe a requirement of the Safety Plan or to carry out any construction, operation or maintenance activity in contravention of (or in absence of) the safety plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 2.5 of the Technical Provisions.	3	A	1 Day
9	Project Management	Schedule	Comply with a schedule requirement of any Technical Provision Section or the Agreement, except where provided elsewhere in this Attachment 1.	2	B	7 Days

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
10	Environmental Compliance	CEPP	Maintain and update the complete Comprehensive Environmental Protection Program (CEPP) as required by Sections 4.3 and 4.4 of the Technical Provisions.	2	A	7 Days
11	Environmental Compliance	Environmental Approvals	Comply with Section 4.2 of the Technical Provisions.	5	B	7 Days
12	Environmental Compliance	Mitigation	Comply with a requirement of Section 12.2.1 or 15.4 of the Agreement.	3	B	7 Days
13	Utility Adjustments	Maintain service	Maintain a utility service fully operational in accordance with Section 6.4 of the Technical Provisions.	3	A	3 Days
14	Design and Construction	Implementation of Directive Letters	Implement a Directive Letter in accordance with Section 13.3 of the Agreement	3	B	14 Days
15	Operations and Maintenance	Accident Reduction Program	Implement an accident monitoring and reduction program in accordance with Section 19.2.3 of the Technical Provisions	2	B	14 Days
16	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 3.5 or more for any Element Category in any quarterly audit as described in Section 19.3.6 of the Technical Provisions.	6	C	None
17	Operations and Maintenance	Asset Condition	Achieve a mean Asset Condition Score of 2.5 or more for any Element Category in any quarterly audit as described in Section 19.3.7 of the Technical Provisions.	6	C	None
18	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 3 or more in any quarterly audit as described in Section 19.3.6 of the Technical Provisions.	6	C	None
19	Operations and Maintenance	Asset Condition	Achieve an Asset Condition Score of 2 or more as described in Section 19.3.7 of the Technical Provisions.	6	C	None
20	Operations and Maintenance	Category 1 Defect	Address a Category 1 defect within the time period shown in the Performance and Measurement Table.	3	B	PMT
21	Operations and Maintenance	Handback Requirements Reserve	Establish and fund the Handback Requirements Reserve when required and provide appropriate account information in accordance with Section 8.11 or Exhibit 14 to the Agreement.	2	B	30 Days

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
22	Operations and Maintenance	Incident Management Plan	Comply with a requirement in respect of the Incident Management Plan as required by Section 18.2.4 of the Agreement, or 22.2 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation.	4	B	7 Days
23	Operations and Maintenance	Operations Management Plan	Comply with a requirement in respect of the Operations Management Plan as required by Section 22.2 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation, except where provided elsewhere in this Attachment 1.	3	B	7 Days
24	Operations and Maintenance	Patrolling	Conduct a patrol in accordance with Section 22.3.3 of the Technical provisions.	5	C	None
25	Operations and Maintenance	Maintenance Management Information System	Implement a Maintenance Management Information System in accordance with Section 19.5.3 of the Technical Provisions.	2	A	14 Days
26	Operations and Maintenance	Safety	Implement and perform Safety Compliance work in accordance with Section 25.5.2 of the Agreement.	2	B	3 Days
27	Operations and Maintenance	Technology Enhancements	Make a technology enhancement as and when necessary in accordance with Section 25.2 of the Agreement.	2	A	30 Days
28	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open in accordance with Section 18.3.2 of the Technical Provisions	3	C	None
29	Operations and Maintenance	Traffic Control Plans	Implement a traffic control measure in a manner consistent with a Traffic Control Plan as required by Section 18.3.1 of the Technical Provisions.	3	B	1 Day
30	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 1 during Period A following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that one lane more than permitted under such Section is closed or less than minimum width	3	B	1 Hour

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
31	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 1 during Period A following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	17	B	1 Hour
32	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 2 during Period A following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	4	B	1 Hour
33	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 2 during Period A following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that three lanes more than permitted under such Section are closed or less than minimum width	22	B	1 Hour
34	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 1 during Period A following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour
35	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 1 during Period B following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
36	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 2 during Period B following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that three lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour
37	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 1 during Period B following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that one lane more than permitted under such Section is closed or less than minimum width	1	B	1 Hour
38	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 1 during Period B following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	13	B	1 Hour
39	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 2 during Period B following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that three lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour
40	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 1 during Period C following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
41	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 2 during Period C following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that three lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour
42	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 1 during Period C following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	2	B	1 Hour
43	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 1 during Period D following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	3	B	1 Hour
44	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Northbound Section 2 during Period D following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that three lanes more than permitted under such Section are closed or less than minimum width	5	B	1 Hour
45	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 1 during Period D following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that two lanes more than permitted under such Section are closed or less than minimum width	4	B	1 Hour

Ref	Main Heading	Sub Heading	Failure to:	Number of Points	Assessment Category	Cure Period
46	Operations and Maintenance	Lane Closures	Maintain General Purpose Lane(s) open or with minimum width or greater for Southbound Section 2 during Period D following the applicable Service Commencement Date in accordance with Section 18.3.1.2 of the Technical Provisions, for each hour that three lanes more than permitted under such Section are closed or less than minimum width	1	B	1 Hour
47	Operations and Maintenance	Traffic Management Plan	Comply with the Traffic Management Plan as required by Section 18.2 of the Technical Provisions where the failure impacts or has the potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligations.	3	B	1 Day
48	Tolling	Publicity of toll rates	Publicize and make available or otherwise provide the current or prevailing toll rate in accordance with Exhibit 10 to the Agreement	2	C	None
49	Tolling	Toll pricing	Comply with the Toll Segment tolling methodology in accordance with Exhibit 10 to the Agreement, other than as provided elsewhere in this Attachment 1.	4	C	None
50	Tolling	Tolling Operations	Comply with a requirement of Section 21.4 or 21.6 of the Technical Provisions.	3	B	7 Days
51	Tolling	User Privacy	Comply with Section 14.6.1 of the Agreement	2	A	7 Days
52	Tolling	User Privacy	Comply with Section 14.6.4 of the Agreement, other than as provided elsewhere in this Attachment 1.	2	A	7 Days

EXHIBIT 19
FORM OF DISPUTES BOARD AGREEMENT

*** * * * ***

DISPUTES BOARD AGREEMENT

This Disputes Board Agreement is made and entered into as of [●] (the "**Effective Date**"), by and between the Texas Department of Transportation ("**TxDOT**"), and [●], a [●] limited liability company ("**Developer**"). TxDOT and Developer are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, State Highway 288 Toll Lanes in Harris County, dated as of the Effective Date (the "**Agreement**").

B. Section 30.3 of the Agreement, provides for the establishment and operation of a disputes review board to resolve each Dispute if, as and when a Dispute arises under the Agreement, other than certain Disputes specified in Section 30.1.4 of the Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Agreement, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

SECTION 1
DEFINITIONS AND REFERENCES

1.1 Definitions. All capitalized terms used in this Disputes Board Agreement and not defined or modified herein shall have the same meaning as set forth in the Agreement.

1.2 Reference Section of Agreement. Section 30.3 of the Agreement discusses the Disputes Board's role in resolving Disputes and is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Disputes Board Agreement to a "Section" mean the Section contained in this Disputes Board Agreement.

SECTION 2
PURPOSE AND ROLE

2.1 **Purpose and Role of the Disputes Board; Binding Disputes Board Decision.** The sole purposes of the Disputes Board are to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision. The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Disputes Board Agreement and in Section 30.3 of the Agreement. Notwithstanding that each Disputes Board member will have been engaged by a Party under a Disputes Board Member Joinder Agreement, none of the Disputes Board members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party.

SECTION 3
SELECTION, REPLACEMENT AND REMOVAL OF DISPUTES BOARD MEMBERS AND CANDIDATES

3.1 Selection of Disputes Board Candidates and Disputes Board Members

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications set forth in Section 4 and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a "**Disputes Board Member Candidates List**"). No Party shall communicate ex parte with a person on its or the other Party's Dispute Board Member Candidates List regarding the substance of a Dispute.

3.1.2 Whenever, a Dispute that is subject to the Dispute Resolution Procedures is referred to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received (or within seven days after notice of a Fast-Track Dispute is given or received), appoint and engage one of the approved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4. The panel shall consist of (a) one member selected by TxDOT, (b) one member selected by Developer and (c) a third member selected pursuant to Section 3.1.3. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1.

3.1.3 The two members whom TxDOT and Developer appoint to the Disputes Board shall, within 15 days after their appointment (or within seven days after their appointment, if the Dispute for resolution is a Fast-Track Dispute), select the third Disputes Board member (the "**Disputes Board Chair**") from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. If the two Disputes Board members appointed by TxDOT and Developer are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either TxDOT or Developer or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates who appear on the Parties' Disputes Board Member Candidate Lists and meet the Disputes Board Member Qualifications. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the candidates remaining on the Parties' Disputes Board Member Candidate Lists or does not meet the Disputes Board Member Qualifications. Within 15 days after the selection of the Disputes Board Chair by the two appointed members or the Chief Administrative Judge (or within seven days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member panel, and any such agreement shall be irrevocable when signed in writing. If the Parties so agree, they shall issue a joint written directive stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. Thereafter, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Disputes Board Agreement.

3.2 Replacing Candidates on a Party's Disputes Board Member Candidates List

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, *provided*, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the "**Nominating Party**") until complete Disclosure Statements on such individual are furnished to the other Party (the "**Evaluating Party**") and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party's Disputes Board Member Candidates List. "**Disclosure Statements**" shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after the Evaluating Party receives a proposed candidate's Disclosure Statements (the "**Disputes Board Member Candidate Evaluation Period**"), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes. Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within 15 days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period (as it may be extended), such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in reasonable detail in the Evaluating Party's notice of disapproval).

3.2.4 If the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party

disagrees that such candidate is not qualified or eligible for service, the Nominating Party may seek resolution pursuant to Section 30.3 of the Agreement.

3.3 Removal of Disputes Board Member; Appointment of Replacement

3.3.1 Subject to Section 3.3.2, any of the Persons specified in this Section 3.3.1 at any time may terminate the appointment of a Disputes Board member (including the Disputes Board Chair) due to (a) Disputes Board Member Conflict of Interest or (b) Disputes Board Member Misconduct (such termination constituting a termination "For Cause" hereunder). Subject to Section 3.3.2, termination for Cause shall be effective upon service of such Person's notice of termination on the affected Disputes Board member and the Parties. Following termination and removal For Cause, or the death or resignation of a Disputes Board member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board member's appointment For Cause;

(b) TxDOT and Developer may, upon mutual agreement, terminate any Disputes Board member's appointment For Cause or without cause; and

(c) TxDOT or Developer may unilaterally terminate the appointment of any Disputes Board member For Cause.

3.3.2 If a Disputes Board member's appointment is terminated For Cause and a Party disagrees that such Disputes Board member should have been terminated For Cause, such Party may, within five Business Days after such Party receives notice of the Disputes Board member's termination of appointment, seek resolution pursuant to Article 30 of the Agreement. The Disputes Board member who is the subject of the disputed termination For Cause shall not participate in the resolution of such Dispute, but may be called to provide testimony and evidence. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the proprietary of such termination. If the resolution of the Dispute is that termination of a Disputes Board member For Cause was unjustified, such termination shall be void.

3.3.3 In the event that one or more Disputes Board members needs to be replaced due to removal, death or resignation of one or more Disputes Board members, replacement Disputes Board members shall be appointed in the same manner as the predecessor Disputes Board members until the Disputes Board is reconstituted as a three person board. The Parties shall commence the process to appoint each replacement Disputes Board member as soon as notice of removal, death or resignation is given or received and shall complete the appointment as soon as possible, but in no event more than 30 days thereafter.

SECTION 4
QUALIFICATIONS AND CONDUCT OF DISPUTES BOARD MEMBERS

"**Disputes Board Member Qualifications**," as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party's Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 and the absence of grounds for disqualification as described in Section 4.2.

4.1 Requisite Experience. All Disputes Board members shall be attorneys who (a) are retired judges with at least 10 years prior experience as a sitting judge or (b) are active members of the State Bar of

Texas or any other state bar (of the United States) with at least 10 years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past 10 years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects. The other Party cannot disapprove a proposed candidate for inclusion on a Party's Dispute Board Member Candidate List due to lack of preferred qualifications if the Candidate List includes two other candidates who have one of the preferred qualifications.

4.2 Disqualification. No Disputes Board member shall have a Disputes Board Member Conflict of Interest or a financial interest in the Project, in any Contract or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party's Prior Approval of Disputes Board Member

4.3.1 An Evaluating Party's approval or deemed approval of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual's lack of qualifications under Section 4.1 (except if such individual's lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board member.

SECTION 5
PROCEDURES AND SCOPE OF WORK OF THE DISPUTES BOARD

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; *provided, however*, that: (a) the Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the Agreement or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and (b) the Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto. Such modification shall take effect upon the Disputes Board Chair's receipt of the Parties' written consent.

5.2 Jurisdiction. If a responding Party asserts that a particular claim, demand, dispute, disagreement or controversy is a matter identified in Section 30.1.4 of the Agreement as beyond the Dispute Board's authority, the Disputes Board shall hear, consider and render a determination with respect to such assertion as a preliminary matter prior to consideration of the underlying matter. If the Disputes Board determines that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 30.1.4 of the Agreement as beyond its authority, then it shall issue a Disputes Board Decision dismissing

the same, without prejudice to the claiming Party's right to appeal such Disputes Board Decision in accordance with Section 30.4.1 of the Agreement or to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the Disputes Board determines the claim, demand, dispute, disagreement or controversy is a matter within its authority, it shall issue such determination in writing to the Parties, including its reasoning, proceed to consideration of the underlying matter, and include in the Disputes Board Decision on the underlying matter findings of fact, conclusions and a decision on the issue of its authority. No appeal may be taken from the Disputes Board's determination that it has the requisite authority over the matter until a Disputes Board Decision is rendered on the underlying matter. If the responding Party asserts lack of authority before the Disputes Board prior to hearings on the underlying matter, then the responding Party's appearance in the Disputes Board proceedings to contest the underlying matter shall be without waiver of or prejudice to its right to appeal in accordance with Article 30 of the Agreement the Disputes Board's determination of authority.

5.3 Procedures for Disputes Board's Resolution of Disputes

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including any time periods listed therein for actions by the Disputes Board. "**Commercial Rules**" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstance has arisen or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Disputes Board Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A "**Small Claim**" is a Claim or related or similar Claims that arise fairly contemporaneously out of the same set of acts, events or circumstances, that the Parties mutually agree to have resolved solely by the Disputes Board Chair, and that the Parties mutually agree will be subject to an aggregate cap on award. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is $500,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board member shall be released from further service. Alternately, the Parties may, but are not obligated to, bypass appointment of two Dispute Board members and directly select a mutually acceptable individual from the Dispute Board Member Candidates Lists to serve as the Disputes Board Chair to resolve the Small Claim. Thereafter, in the context of the Disputes Board Chair's resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 30.3 of the Agreement to the "Disputes Board" or the "Disputes Board members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than the mutually

agreed aggregate cap on award, and TxDOT or Developer as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of such cap

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation) that this is inappropriate. The Disputes Board shall revise or deny the proposed aggregation if there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes, or if the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes. The Disputes Board shall specify, in a Disputes Board Decision on this matter, which Disputes (if any) are to be aggregated and which Disputes (if any) are to be excluded from aggregation. Those not aggregated shall be considered by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board members. If this proves infeasible, the dissenting Disputes Board member may prepare a minority report. Within 20 days after the final hearing on a Dispute (and within five days after the final hearing on a Fast-Track Dispute), the Disputes Board Chair shall issue to the Parties the Dispute Board Decision, including the Disputes Board's written findings of fact and conclusions of law in support of the Disputes Board Decision.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all documents, other written materials and information presented or exchanged in a proceeding before the Disputes Board that are confidential pursuant to Section 30.8 of the Agreement. Each Disputes Board member shall maintain the privacy of Confidential Materials pursuant to Section 30.8 of the Agreement. Within 30 days after the Disputes Board Chair receives written notice of issuance of a final, non-appealable order on a Dispute that was the subject of a Disputes Board Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence.

5.7 Dissolution of Disputes Board. Once there is issued a final, non-appealable order on a Dispute that was the subject of a the Disputes Board Decision, the Disputes Board shall be dissolved and the Disputes Board members serving on such Disputes Board shall be released from further service.

SECTION 6
TXDOT AND DEVELOPER RESPONSIBILITIES

6.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board member one copy of the Agreement. TxDOT shall also serve upon each Disputes Board member (and concurrently upon Developer) any other documents which are or may become pertinent to the activities of the Disputes

Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

6.2 Developer Responsibilities. Developer shall serve on each Disputes Board member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Developer's position.

6.3 Parties' Responsibilities for Costs and Expenses; Cooperation

6.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time required for payment, then, unless the non-paying Party has promptly disputed the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at a floating rate equal to the LIBOR in effect from time to time until the date the amount due is paid, no matter which Party is the prevailing Party.

6.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 30.3.1 of the Agreement.

SECTION 7
TERM

7.1 Term. Consistent with the DRP Rules, the term of this Disputes Board Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the Agreement and thereafter for so long as either Party has any obligation under the CDA Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

SECTION 8
PAYMENT OF DISPUTES BOARD MEMBERS' FEES, COSTS AND EXPENSES

8.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board member in his or her Disputes Board Member Joinder Agreement. The personal services of the Disputes Board member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board member's participation on the Disputes Board.

8.2 Disputes Board Member Invoices. Each Disputes Board member shall submit invoices concurrently to TxDOT and Developer on a monthly basis for payment of the full amount due for such Disputes Board member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Developer, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. Such invoices shall specify that the invoiced Party is responsible only for one-half of the invoiced amount. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

8.3 Payment by Parties. Each Party shall be responsible and make payment for one-half of all fees, costs and expenses of the Disputes Board members' service on the Disputes Board. Such costs and expenses include, but are not limited to, required travel of the Disputes Board members, and the costs of witnesses and of any proof produced at the direct request of the Disputes Board. Each Disputes Board member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board member's invoice shall notify such member and the other Party in writing of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board member at the time required for payment, then, unless the non-paying Party has promptly disputed the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at a floating rate equal to the LIBOR in effect from time to time until the date the amount due is paid, no matter which Party is the prevailing Party.

8.4 Retention of Cost Records and Accounts. Disputes Board members shall keep available for inspection by representatives of TxDOT and Developer, for a period of five years after final payment, the cost records and accounts pertaining to this Disputes Board Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of the Disputes Board member's services or compensation under this Disputes Board Agreement is initiated before the expiration of the five year period, the Disputes Board member shall retain the cost records and accounts until such claim is completed.

8.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures. The Party producing a witness shall bear the fees, costs and expenses of such witness, except that the Parties shall split the expenses for any expert witness retained by the Disputes Board to advise them regarding a Dispute.

SECTION 9
GENERAL PROVISIONS

9.1 Nonassignability. Disputes Board members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

9.2 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board member, in the performance of duties as a Disputes Board member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. No Disputes Board member will be entitled to any employee benefits from either Party.

9.3 No Effect on Potential Liabilities. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Disputes Board Agreement alters the potential liabilities of either Party.

9.4 Damages Waiver. Neither TxDOT nor Developer will hold any Disputes Board member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board member.

9.5 Applicable Law. The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

9.6 Amendment in Writing. This Disputes Board Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

9.7 Complementary Provisions; Order of Priority. The Parties intend for the procedures established in Section 30.3 of the Agreement and the terms and conditions of this Disputes Board Agreement to be complementary. In the event of any conflict between this Disputes Board Agreement and Section 30.3 of the Agreement, the Agreement shall control.

9.8 Notices. Notices hereunder shall be sent as provided in Section 35.12 of the Agreement. The address for each Disputes Board member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

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

Signature Page Immediately Follows

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Disputes Board Agreement as of the Effective Date.

Developer	**TxDOT**
[●]	**Texas Department of Transportation**
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Title: [●]

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

*** * * * ***

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT is entered into as of [●], by and between [*Specify TxDOT or Developer*] (the "**Appointing Party**"), and [●], an individual (the "**Disputes Board Member**").

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, SH 288 Toll Lanes in Harris County Project, dated as of the Effective Date (the "**Agreement**").

B. Section 30.3 of the Agreement provides for the establishment and operation of a Disputes Board to resolve Disputes.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in Section 30.3 of the Agreement, the Disputes Board Agreement and this Disputes Board Member Joinder Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

SECTION 1
DEFINITIONS AND REFERENCES

1.1 Definitions. All capitalized terms used in this Disputes Board Member Joinder Agreement and not defined or modified herein shall have the respective meanings set forth in the Agreement .and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 30.3 of Agreement. The Disputes Board Agreement and Section 30.3 of the Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

SECTION 2
APPOINTMENT

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, in accordance with the terms and conditions of Section 30.3 of the Agreement, the Disputes Board Agreement and this Disputes Board Member Joinder Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through issuance of a final, non-appealable order concerning the applicable Dispute, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section

5.5.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstances that would, in such member's good faith judgment, (i) prevent such member from discharging his or her duties in the impartial and objective manner required under the Disputes Board Agreement or (ii) result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his or her resignation

SECTION 3
REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Developer that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Developer that he or she (a) shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with Section 30.3 of the Agreement; (b) shall not engage in any conduct that would be or result in a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct; and (c) shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 30.8 of the Agreement.

SECTION 4
COMPENSATION

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating the same are attached hereto as Annex 1. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 8.1, 8.2 and 8.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

SECTION 5
GENERAL PROVISIONS

5.1 Third Party Beneficiary. Whichever of TxDOT or Developer that is not the Appointing Party is an express third party beneficiary of this Disputes Board Member Joinder Agreement entitled to enforce the terms and conditions hereof against the Disputes. Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Developer have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Developer shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Disputes Board Member Joinder Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Disputes Board Member Joinder Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Disputes Board Member Joinder Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Disputes Board Member Joinder Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Disputes. Board Member Joinder Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of Section 4.2 and this Section 5 shall survive termination of this Disputes Board Member Joinder Agreement.

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

Signature Page Immediately Follows

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Disputes Board Member Joinder Agreement as of the day and year first set forth above.

Appointing Party	**Disputes Board Member**
[TxDOT or Developer]	
By: _____	By: _____
Name: [●]	Name: [●]
Title: [●]	Address: [●]

ANNEX 1 TO DISPUTES BOARD MEMBER JOINDER AGREEMENT

FEES, COSTS AND EXPENSES

[*To Be Attached*]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1 Agreement of The Parties

(a) The "Expedited Procedures" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "Procedures for Large, Complex Commercial Disputes" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at $500,000 or more, exclusive of claimed interest, fees and costs *provided*, however, that the amount of $500,000 shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 30.3 of the Agreement or the Disputes Board Agreement, Section 30.3 of the Agreement and the Disputes Board Agreement shall control.

R-2 Disputes Board. The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3 Assumed Objection. Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4 Changes of Claim. After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party, who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5 Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if the Disputes Board is barred from considering and resolving an alleged Dispute pursuant to Section 30.1.4 of the Agreement.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6 Administrative Conference. At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7 Appointment. Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8 Disclosure

(a) Any person appointed or to be appointed as a Disputes Board member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board member's impartiality or independence, including any bias or any financial or personal interest in the resolution of the Dispute or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9 Disqualification of Disputes Board Member. Each Disputes Board member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for (a) inability or refusal to perform his or her duties with diligence and in good faith, and (b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the Agreement.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board member is then serving on a Disputes Board, (i) neither Party, including the members of its Conflicts Group and its counsel or designated representatives, shall communicate ex parte with such Disputes Board member and (ii) no Disputes Board member shall communicate ex parte with any Person (other than other Disputes Board members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate in writing or by e-mail with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11 Hearings After Filling of Vacancies. In the event of the appointment of a substitute Disputes Board member, the panel of Disputes Board members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12 Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13 Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14 Date, Time, and Place of Hearing. The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least five Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15 Attendance of Witnesses. Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16 Representation. Counsel or other authorized representative may represent each Party. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17 Dispute Board Members' Certifications; Witness Oaths. Before proceeding with the first hearing, each Disputes Board member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies as to his or her meeting the Disputes Board Member Qualifications and the absence of Disputes Board Member Conflicts of Interest and Disputes Board Member Misconduct (and a covenant to not engage in Disputes Board Member Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18 Stenographic Record. Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19 Interpreters. Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20 Postponements. The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21 Proceedings in the Absence of a Party or Representative. The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. A Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22 Conduct of Proceedings

(a) The claiming Party shall present evidence to support its claim. The responding Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising its discretion, shall conduct the • proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23 Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by Law for issuance of a subpoena in a civil action pending in a State district court. All provisions of the Texas Rules of Civil Procedure for service and

response to subpoenas in a civil action pending in State district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a State district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses, including the Independent Engineer.

R-24 No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25 Inspection or Investigation. The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the. Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both of the Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26 Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

R-27 Closing of Hearing. The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If posthearing briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of such briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28 Reopening of Hearing. The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue its decision.

R-29 Waiver of Rules. Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30 Extensions of Time. The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31 Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of any Disputes Board Decision made under these rules shall be given in accordance with Section 35.12 of the Agreement.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32 Majority Decision. When the panel consists of more than one Disputes Board, a majority of the Disputes Board members must make all decisions.

R-33 Time of Issuance of the Disputes Board Decision. The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34 Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of Law as part of the Disputes Board Decision.

R-35 Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute that the Disputes Board determines is available under the Agreement and applicable Law and within the scope of the agreement of the Parties under Section 30.3 of the Agreement.

(b) In the final Disputes Board Decision, the Disputes Board shall assess compensation and damage amounts, where applicable.

R-36 Disputes Board Decision upon Settlement. If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a consent Disputes Board Decision.

R-37 Acceptance of Delivery of Disputes Board Decision. The Disputes Board Chair shall give, and the Parties shall accept, notice of the written Disputes Board Decision, including the written findings of fact and conclusions of law, addressed and delivered to the Parties as provided in R-31.

R-38 Correction of Errors in Disputes Board Decision. Within five Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to re-determine the merits of any Dispute already decided. The other Party shall be given five Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the Disputes Board Decision. The Disputes Board shall perform the requested correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, under R-28.

R-39 Release of Documents for Subsequent Proceedings. The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40 Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41 Interpretation and Application of Rules. The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled.

R-42 No Suspension for Nonpayment. If a Disputes Board member's compensation or administrative charges have not been paid in full, such Disputes Board member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1 Serving of Notices. In addition to notice provided pursuant to Section 24.12 of the Agreement, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree and thereafter a Party fails to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2 Exchange of Exhibits. At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3 Proceedings on Documents. Where no Party's claim exceeds $10,000, exclusive of interest and dispute resolution costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4 Date, Time, and Place of Hearing. In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5 The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6 Time of Award. Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1 Administrative Conference. Prior to commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within seven days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day after the date of such notice, and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the purpose of obtaining additional information about the nature and magnitude of the Dispute, the anticipated length of hearing, and scheduling, and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2 Preliminary Hearing. As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) Service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) Stipulations to uncontested facts;

(c) The extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) Exchange and pre-marking of those documents which each Party believes may be offered at the hearing;

(e) The identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) Whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) The extent to which hearings will proceed on consecutive days;

(h) Whether a stenographic or other official record of the proceedings shall be maintained;

(i) The possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) The procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order. Nothing in any scheduling and procedure order shall conflict with the procedures established under Section 30.3 of the Agreement or Section 5 of the Disputes Board Agreement.

L-3 Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, *provided*, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 30.3 of the Agreement or Section 5 of the Disputes Board Agreement.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the scheduling and procedure order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the Parties' intent to resolve Disputes expeditiously, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the scheduling and procedure order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

EXHIBIT 20
TERMINATION FOR CONVENIENCE COMPENSATION AMOUNT

Date of Effectiveness of Termination Occurs on or after:	**And before:**	**Termination Compensation Amount**
Service Commencement Date[1]	The 2nd anniversary of Service Commencement Date	$[●]
The 2nd anniversary of Service Commencement Date	The 4th anniversary of Service Commencement Date	$[●]
The 4th anniversary of Service Commencement Date	The 6th anniversary of Service Commencement Date	$[●]
The 6th anniversary of Service Commencement Date	The 8th anniversary of Service Commencement Date	$[●]
The 8th anniversary of Service Commencement Date	The 10th anniversary of Service Commencement Date	$[●]
The 10th anniversary of Service Commencement Date	The 12th anniversary of Service Commencement Date	$[●]
The 12th anniversary of Service Commencement Date	The 14th anniversary of Service Commencement Date	$[●]
The 14th anniversary of Service Commencement Date	The 16th anniversary of Service Commencement Date	$[●]
The 16th anniversary of Service Commencement Date	The 18th anniversary of Service Commencement Date	$[●]
The 18th anniversary of Service Commencement Date	The 20th anniversary of the Service Commencement Date	$[●]
The 20th anniversary of the Service Commencement Date	The 22nd anniversary of the Service Commencement Date	$[●]
The 22nd anniversary of the Service Commencement Date	The 24th anniversary of the Service Commencement Date	$[●]
The 24th anniversary of the Service Commencement Date	The 26th anniversary of the Service Commencement Date	$[●]
The 26th anniversary of the Service Commencement Date	The 28th anniversary of the Service Commencement Date	$[●]
The 28th anniversary of the Service Commencement Date	The 30th anniversary of the Service Commencement Date	$[●]
The 30th anniversary of the Service Commencement Date	The 32nd anniversary of the Service Commencement Date	$[●]
The 32nd anniversary of the Service Commencement Date	The 34th anniversary of the Service Commencement Date	$[●]
The 34th anniversary of the Service Commencement Date	The 36th anniversary of the Service Commencement Date	$[●]
The 36th anniversary of the Service Commencement Date	The 38th anniversary of the Service Commencement Date	$[●]
The 38th anniversary of the Service Commencement Date	The 40th anniversary of the Service Commencement Date	$[●]
The 40th anniversary of the Service Commencement Date	The 42nd anniversary of the Service Commencement Date	$[●]
The 42nd anniversary of the Service Commencement Date	The 44th anniversary of the Service Commencement Date	$[●]
The 44th anniversary of the Service Commencement Date	The 46th anniversary of the Service Commencement Date	$[●]
The 46th anniversary of the Service Commencement Date	The 48th anniversary of the Service Commencement Date	$[●]
The 48th anniversary of the Service Commencement Date	The end of the Term	$[●]

[*To be inserted from Developer's Proposal*]

[1] To the extent Developer's Project Segment Plan contemplates multiple Project Segments, the Service Commencement Date refers to the first Service Commencement Date.

EXHIBIT 21
FORM OF LENDER'S DIRECT AGREEMENT

* * * * *

DIRECT AGREEMENT

This Direct Agreement (the "**Agreement**") is made by and between the State of Texas acting by and through the Texas Department of Transportation ("**TxDOT**") and [●] ("**Lender**") for the purpose of facilitating the Lender's financing or Refinancing of the TxDOT SH 288 Toll Lanes Project in Harris County (the "**Project**").

RECITALS

WHEREAS, TxDOT and [●], a limited liability company ("**Developer**") have entered into a Comprehensive Development Agreement ("**CDA**") for the Project, which CDA contemplates Developer obtaining financing or Refinancing from third parties; and

WHEREAS, TxDOT desires to facilitate the Lender's provision of financing or Refinancing to Developer; and

WHEREAS, in order to induce the Lender to provide the financing or Refinancing necessary for the Project, the Lender requires certain assurances from TxDOT regarding the Lender's rights in the event of a default by Developer; and

WHEREAS, the Lender acknowledges that any rights under this Agreement are solely derivative of the rights of Developer under the CDA; and

WHEREAS, the Lender is [making a direct, secured loan to Developer to finance or refinance the Project without participating lenders] [acting as the Collateral Agent for and on behalf of participating lenders providing a secured loan to Developer to finance or refinance the Project (in which case "Collateral Agent" as used in this Agreement refers to the Lender)]; and

NOW, THEREFORE, TxDOT and the Lender, in consideration of the mutual covenants and agreements herein contained, including within these recitals, do hereby mutually agree as follows.

ARTICLE 1
DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

1.1 Definitions. Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit 1 to the CDA.

1.2 Recitals Incorporated. The Recitals in this Agreement are part of the terms of this Agreement.

1.3 Contract Documents and Order of Precedence. The following documents comprise the contract documents for this Agreement. In the event of any conflict, ambiguity or inconsistency among the contract documents, the order of precedence shall be as follows: (a) supplemental agreements, change orders, and addenda to this Agreement; (b) this Agreement, including Recitals; and (c) those provisions of the CDA that are explicitly referenced in this Agreement.

1.4 No Effect on CDA. Nothing in this Agreement amends or modifies any of Developer's obligations to TxDOT under the CDA.

ARTICLE 2
TERMS

2.1 Conditions and Limitations Respecting Lenders' Rights

2.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement , unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 3.5 of the CDA.

2.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings under clause (b), (c) or (d) of the definition of Exempt Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement, unless the Refinancing is in compliance with Section 3.7 of the CDA.

2.1.3 No Funding Agreement or Security Document shall be binding upon TxDOT in the enforcement of its rights and remedies as provided herein and by Law, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement, unless and until (a) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been delivered to TxDOT and (b) TxDOT has received written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, TxDOT shall not be charged with notice of such assignment, and no assignee shall be entitled to the rights, benefits and protections of this Agreement, unless and until (i) TxDOT has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, and (ii) TxDOT has received written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, TxDOT shall not be charged with notice of such change, and no substitute Collateral Agent shall be entitled to the rights, benefits and protections of this Agreement, unless and until TxDOT has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

2.1.4 The Lender shall not be entitled to the rights, benefits and protections of this Agreement unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents. For avoidance of doubt, if the Lender holds Project Debt secured by a Subordinated Security Document it shall not have any rights, benefits or protections under this Agreement.

2.1.5 The Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Project, the Lease or Toll Revenues than Developer has at any applicable time under the CDA, other than the provisions in this Agreement for the specific protection of the Lender.

2.1.6 All rights acquired by the Lender under any Funding Agreement or Security Document shall be subject to the provisions of the CDA and the Lease and to the rights of TxDOT hereunder and thereunder.

2.1.7 The following provisions of this Agreement shall apply only to Security Documents, and the Lenders thereunder, that comply with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement. None of the following provisions of this Agreement shall be construed inconsistently with the provisions of this Section 2.1. The provisions of this Agreement that are binding on TxDOT shall inure only to the benefit of the Lender, and create no rights in favor of Developer.

2.2 Effect of Amendments. While any Security Document is in effect, no agreement between TxDOT and Developer for the modification or amendment of the CDA or the Lease shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in the CDA (e.g., Sections 13.1, 13.2 and 13.3 of the CDA).

2.3 Notices to Collateral Agent. As long as any Security Document shall remain unsatisfied of record, TxDOT shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential breach of the CDA or the Lease or an actual or potential Developer Default, including any Warning Notice, and any notice it sends to Developer, the Design-Build Contractor or any O&M Contractor of default by the Design-Build Contractor or any O&M Contractor under the Design-Build Contract or O&M Contract.

2.4 Opportunity to Cure and Step-In. As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender and Funding Agreements. None of the following provisions shall apply, however, with respect to a Developer Default under Section 29.1.10, 29.1.14, 29.1.15, 29.1.16 or 29.1.17 of the CDA or termination of the CDA or Lease as a result thereof.

2.4.1 Should any Developer Default occur which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate or suspend its obligations under this Agreement, TxDOT shall not terminate the CDA or the Lease until it first (a) delivers to the Collateral Agent a copy of the Warning Notice given to Developer and (b) provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided below; provided, however, that no opportunity to cure beyond that afforded Developer shall be required for (i) failure of Developer to timely deliver or perform any remedial plan required under Section 29.4.8 of the CDA, and (ii) neither a Warning Notice nor opportunity to cure shall be required for a Developer Default that is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Project, including a Developer Default under Section 29.1.10, 29.1.14, 29.1.15, 29.1.16 or 29.1.17 of the CDA. Commencing on the date the applicable cure period available to Developer expires, the Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity; and from and after such date TxDOT shall accept such performance to remedy the Developer Default by or at the instigation of the Lender, Collateral Agent or Substituted Entity, as if Developer had done the same. TxDOT shall have no obligation to accept any Lender's tender of a cure prior to such date.

2.4.2 If the Developer Default consists of Developer's failure to pay a monetary obligation, the Collateral Agent may cure such Developer Default by paying all amounts due within 60 days after TxDOT delivers a copy of the Warning Notice to the Collateral Agent. If such payment is not made within such 60-day period, TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

2.4.3 If the Developer Default consists of, or leads to, Developer's failure to achieve Service Commencement of all Project Segments by the Service Commencement Deadline, as the same may be extended pursuant to the CDA, then the Collateral Agent shall have until the latter of (a) the end of the 90-day Warning Notice period set forth in Section 29.3(b) of the CDA and (b) the Long Stop Date, as the

same may be extended pursuant to the CDA and Section 2.4.9 of this Agreement, to achieve or cause Developer to achieve Service Commencement of all Project Segments. If Service Commencement of all Project Segments is not achieved by such date, such failure shall constitute a material Developer Default and TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

2.4.4 If the Developer Default is for any reason other than as described in Sections 2.4.2, 2.4.3 and 2.4.7 hereof, , the Collateral Agent shall have a cure period ending 30 days after the later of (a) the date Developer's cure period expires and (b) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Project (e.g. cure of Developer Defaults under Sections 29.1.9 and 29.1.18 of the CDA) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within 60 days after TxDOT delivers a copy of the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending 180 days after the date Developer's cure period expires, unless extended pursuant to Section 2.4.10 of this Agreement.

2.4.5 The Collateral Agent shall have the right to postpone and extend the time to cure any Developer Default governed by Section 2.4.4 of this Agreement capable of being cured only through possession of the Project if the Collateral Agent shall:

(a) Within the cure period available therefor under Section 2.4.2 of this Agreement, cure all Developer Defaults which may be cured by the payment of a sum of money, and within the cure period available therefor under Section 2.4.4 of this Agreement, undertake to cure any other Developer Default governed by Section 2.4.4 of this Agreement then existing or thereafter occurring and capable of being cured without possession;

(b) Continue to pay or cause to be paid when due all fees, rent and other amounts due from Developer under the CDA or the Lease;

(c) Within the later of (i) five days after expiration of Developer's cure period, if any, and (ii) 30 days after receiving a copy of the Warning Notice, (A) initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project, and (B) notify TxDOT that it intends to extend such deadline under this Section 2.4.5; and

(d) Promptly execute all documents reasonably requested by TxDOT affecting the transactions contemplated by this Agreement and the CDA.

2.4.6 If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession and ownership an assumption in writing of all duties, obligations and liabilities of Developer under the CDA and the Lease, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Developer Default shall be removed, and the CDA and the Lease shall not be terminated, and the Lender or the Substituted Entity shall succeed to the Developer's Interest. In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in the CDA which cannot be cured or performed until the Collateral Agent or its Substituted Entity obtains possession, the Collateral Agent or its Substituted Entity shall have a time after it obtains possession as

may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement.

2.4.7 If the Developer Default is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Project, such as a Developer Default under Section 29.1.10, 29.1.14, 29.1.15, 29.1.16 or 29.1.17 of the CDA, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under Section 29.4.8 of the CDA, then TxDOT may terminate the CDA and the Lease without providing a cure period to any Lender.

2.4.8 If TxDOT terminates the CDA and the Lease for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 32.2 of the CDA, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of the CDA written notice of the termination and a statement of any and all sums which would at that time be due under the CDA and the Lease then known to TxDOT. Thereafter the Collateral Agent or its Substituted Entity, to the extent then permitted by Law, shall have the option to obtain a new comprehensive development agreement, new Project lease, other new CDA Documents and, to the extent necessary new ancillary agreements (together the "**New Agreements**") in accordance with and upon the following terms and conditions:

(a) In order to exercise such option, the Collateral Agent must deliver to TxDOT, within 60 days after TxDOT delivers its written notice of termination, (i) a request for New Agreements, (ii) a written commitment that the Collateral Agent (or its Substituted Entity) will enter into the New Agreements and pay all the amounts described in Section 2.4.8(c) of this Agreement, and (iii) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent (or its Substituted Entity). If any of the foregoing is not delivered within such 360-day period, the option in favor of the Collateral Agent (and all related Lenders) shall automatically expire.

(b) Within 30 days after timely receipt of the written notice, written commitment and New Agreements duly executed, TxDOT shall enter into the New Agreements to which TxDOT is a party with the Collateral Agent or its Substituted Entity, subject to any extension of such 30-day period as TxDOT deems necessary to clear any claims of Developer to continued rights and possession.

(c) Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or its Substituted Entity shall perform all of the following:

(i) Pay to TxDOT any and all sums which would, at the time of the execution of the New Agreements, be due under the CDA or the Lease but for such termination;

(ii) Otherwise fully remedy any existing Developer Defaults under the CDA or the Lease, except any uncured material Developer Default that was known to TxDOT at the time it delivers any estoppel certificate to the Lender but fails to disclose in such estoppel certificate (*provided, however*, that with respect to any Developer Default which cannot be cured until the Collateral Agent or its Substituted Entity obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement);

(iii) Without duplication of amounts previously paid by Developer, pay to TxDOT all reasonable costs and expenses, including TxDOT's Recoverable Costs, incurred by TxDOT in connection with (1) such default and termination, (2) the assertion of rights, interests and defenses in any

bankruptcy proceeding, (3) the recovery of possession of the Project, (4) all TxDOT activities during its period of possession of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, and (5) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or Substituted Entity, TxDOT will provide a written, documented statement of such costs and expenses; and

(iv) Deliver to TxDOT new Payment and Performance Bonds and new letters of credit and guarantees to the extent required under the New Agreement.

(d) Upon execution of the New Agreements and payment of all sums owing to TxDOT, TxDOT shall (i) assign and deliver to the Collateral Agent or its Substituted Entity, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to TxDOT upon termination of the CDA pursuant to Section 31.9 of the CDA, and (ii) if applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or Substituted Entity in accordance with the CDA, all funds TxDOT received from the Handback Requirements Reserve pursuant to Section 20.2.5(a) of the CDA (or from draw on a Handback Requirements Letter of Credit) less so much thereof that TxDOT spent or is entitled to as reimbursement for costs of Renewal Work TxDOT performed prior to the effectiveness of the New Agreements.

(e) The New Agreements shall be effective as of the date of termination of the CDA and the Lease and shall run for the remainder of the term of the CDA and the Lease. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the CDA, the Lease and other corresponding CDA Documents and ancillary agreements and documents that were binding on TxDOT and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 5.1 of the CDA (and any equivalent provisions of the Lease) shall be revised to be particular to the Collateral Agent or its Substituted Entity). Without limiting the foregoing, all Toll Revenues collected by Developer under the CDA shall be included in the determination of the Revenue Payment Amount under the New Agreements.

(f) If the holders of more than one Security Document make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8, TxDOT shall grant the New Agreements to, as applicable, the holder whose leasehold mortgage has the most senior priority of record. Priority shall be established as follows.

(i) TxDOT shall submit a written request to the Collateral Agent to designate the leasehold mortgage having the most senior priority of record. TxDOT shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by TxDOT and without liability to Lender; and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(ii) If TxDOT does not receive the Collateral Agent's written designation within 10 days after delivering written request, then TxDOT may conclusively rely, without further inquiry and without liability to Lender, on the seniority indicated by a then-current title report that TxDOT obtains from one of the four largest title insurance companies doing business in Texas (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(iii) In the event the holders of more than one leasehold mortgage share *pari passu* senior lien priority as indicated pursuant to clause (i) or (ii) above and make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8, TxDOT shall grant the New

Agreements to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(g) The provisions of this Section 2.4.8 shall survive the termination of the CDA and shall continue in full force and effect thereafter.

2.4.9 The Collateral Agent shall have the option to extend the Long Stop Date by two additional 90-day periods, provided all the following terms and conditions have been satisfied by not later than 15 days before the Long Stop Date to be extended:

(a) The Collateral Agent has delivered to TxDOT (i) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (ii) concurrently with such written notice a payment in good funds in the amount of $4,500,000. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend;

(b) The Collateral Agent or its Substituted Entity has obtained ownership of the Developer's Interest and full possession and control of the Project to the exclusion of Developer; and

(c) If any other Warning Notices are then outstanding, the Collateral Agent has demonstrated to TxDOT that it or its Substituted Entity has undertaken and continues and will continue to undertake meaningful steps to prosecute cure to completion with good faith, diligence and continuity.

2.4.10 The Collateral Agent shall have the option to extend the 180-day deadline set forth in Section 2.4.4 of this Agreement or, if applicable, the 180-day deadline after obtaining possession set forth in Section 2.4.6 of this Agreement or the 180-day deadline set forth in Section 2.4.8(c)(ii) of this Agreement , by up to but not exceeding an additional 180 days, provided that all the following conditions precedent have been satisfied by not later than 15 days before the deadline to be extended:

(a) The Collateral Agent has delivered to TxDOT written notice requesting extension and setting forth a reasonable time period needed to effect cure, in any event not exceeding such 180 days;

(b) The Collateral Agent has met all the requirements set forth in (i) Section 2.4.4 of this Agreement, (ii) Sections 2.4.5 and 2.4.6 of this Agreement or (iii) Section 2.4.8(c) of this Agreement, as applicable;

(c) The Collateral Agent has delivered evidence to TxDOT demonstrating, and TxDOT is reasonably satisfied, that full and complete cure by the Collateral Agent is highly likely within the period of extension; and

(d) The Collateral Agent has prepared and submitted to TxDOT, and TxDOT has approved, a remedial plan for effecting full and complete cure. The remedial plan shall set forth a schedule and specific actions to be taken by the Collateral Agent to fully and completely cure, with the schedule to be consistent with the period of extension. TxDOT may require that such actions include new and improved quality management practices, plans and procedures, revised and restated Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

Time is of the essence in the exercise of such option. If for any reason any of the foregoing conditions is not satisfied by 15 days before the deadline that is eligible to be extended, the option shall automatically expire and cease to have effect with respect to such deadline.

2.4.11 Notwithstanding any contrary provisions of the CDA Documents, in the event the Lender or its Substituted Entity obtains ownership of the Developer's Interest and full possession and control of the Project to the exclusion of Developer, all Noncompliance Points accumulated prior to the date the Lender or Substituted Entity obtains ownership and possession shall be reduced to zero. The foregoing shall not, however, excuse the Lender or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the CDA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to TxDOT respecting uncured breaches or failures to perform.

2.4.12 Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the CDA Documents or any Principal Project Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

2.4.13 Nothing in this Section 2.4 shall preclude or delay TxDOT from exercising any remedies other than termination of the CDA and the Lease due to Developer Default, including, subject to TxDOT's express covenants to forebear, TxDOT's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

2.5 Forbearance. To the extent TxDOT has rights to enforce the Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as the CDA remains in effect TxDOT shall forbear from exercising remedies against the Design-Build Contractor or any O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within 15 days after TxDOT delivers written notice to Developer and the Collateral Agent of default by the Design-Build Contractor or any O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured. At TxDOT's request from time to time, Developer or Collateral Agent shall provide to TxDOT reports on the status of any such default, cure and exercise of remedies.

2.6 Substituted Entities

2.6.1 Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the CDA in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by TxDOT makes such payment or takes such action. TxDOT shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

2.6.2 Notwithstanding the foregoing, any entity that is wholly owned by the Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for TxDOT approval, upon delivery to TxDOT of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of TxDOT certifying, representing and warranting such ownership.

2.6.3 TxDOT shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that (a) the proposed Substituted Entity and its contractors collectively

have the financial resources, qualifications and experience to timely perform Developer's obligations under the CDA Documents and Principal Project Documents and (b) the proposed Substituted Entity and its contractors are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest. TxDOT will approve or disapprove a proposed Substituted Entity within 30 days after it receives from the Lender a request for approval together with (i) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as TxDOT may request, and (ii) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, child support statements, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities. If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of TxDOT and the Lender, TxDOT shall be deemed to disapprove.

2.6.4 Lender may request approval of more than one Substituted Entity. The Lender may request approval at any time or times. Any approval by TxDOT of a Substituted Entity shall expire one year after the approval is issued, unless TxDOT approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest. TxDOT may revoke an approval if at any time prior to succeeding to the Developer's Interest (a) the Substituted Entity ceases to be in compliance with TxDOT's rules and regulations regarding organizational conflicts of interest or (b) there occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

2.7 Receivers

2.7.1 The appointment of a receiver at the behest of Developer shall be subject to TxDOT's prior written approval in its sole discretion. The appointment of a receiver at the behest of the Lender if the Lender is not in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement shall be void and may be challenged by TxDOT in any proceeding. The appointment of a receiver at the behest of the Lender if the Lender is in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement shall be subject to the following terms and conditions:

(a) TxDOT's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

(b) Whenever the Lender commences any proceeding for the appointment of a receiver, it shall serve on TxDOT not less than five days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

(c) TxDOT may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

(d) TxDOT may at any time seek an order for replacement of the receiver by a different receiver.

2.7.2 No receiver appointed at the behest of Developer or the Lender shall have any power or authority to replace the Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by TxDOT.

2.8 Other Lender Rights

2.8.1 In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under the CDA and the Lease with respect to curing any Developer Default. TxDOT shall permit the Collateral Agent and its Substituted Entity the same access to the Project and Project Right of Way as is permitted to Developer hereunder. TxDOT hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the Project and Project Right of Way and to perform all acts required to be performed herein or under the CDA, Lease and any Principal Project Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. TxDOT shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

2.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of the CDA, the leasehold estate under the Lease or the Developer's Interest, nor shall the Lender, as such, be deemed to be an assignee or transferee of the CDA, the leasehold estate under the Lease or the Developer's Interest so as to require the Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. Neither the Lender, nor any owner of the leasehold estate under the Lease or the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of the CDA or the Lease unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest. Upon any permitted assignment of the CDA, the Lease and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to TxDOT a recordable instrument of assumption as required under Section 33.5 of the CDA.

2.8.3 The Lender or the Collateral Agent may exercise its rights and remedies under its Security Document with respect to all, but not less than all, of the Developer's Interest.

2.8.4 The exercise by the Lender of its rights with respect to the Developer's Interest under its Security Documents, this Agreement or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of TxDOT or constitute a breach of any provision of or a default under the CDA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 2.6 of this Agreement (and the definition of Substituted Entity).

2.8.5 Whenever TxDOT or Developer obtains knowledge of any condemnation proceedings by a third party affecting the Project or Project Right of Way, it shall promptly give notice thereof to the Lender. The Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and TxDOT and Developer do hereby consent that the Lender may be made such a party or an intervener.

2.9 Consents and Estoppel Certificates

2.9.1 At any time and from time to time, within 15 days after written request of the Lender, TxDOT, without charge, shall (a) consent to (i) the exercise by the Lender of its rights under and in accordance with this Agreement in the event of a Developer Default and (ii) a pledge or hypothecation by Developer of the Developer's Interest under the CDA to the Lender and (b) certify to its best knowledge by written instrument duly executed and acknowledged, to the Lender as follows:

(i) As to whether the CDA has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

(ii) As to the validity and force and effect of the CDA, in accordance with its terms;

(iii) As to the existence of any Developer Default;

(iv) As to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default;

(v) As to the then accumulated amount of Noncompliance Points;

(vi) As to the existence of any claims by TxDOT regarding the CDA;

(vii) As to the Effective Date and the commencement and expiration dates of the Term;

(viii) As to whether a specified acceptance, approval or consent of TxDOT called for under the CDA has been granted;

(ix) As to whether the Lender and its Funding Agreements and Security Documents meet the conditions and limitations set forth in Section 3.5 of the CDA and Section 2.1 of this Agreement; and

(x) As to any other matters of fact within TxDOT's knowledge about the CDA Documents, the Principal Project Documents, Developer, the Project or the Work as may be reasonably requested.

2.9.2 TxDOT shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to TxDOT either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

2.9.3 Any such certificate may be relied upon by, and only by, the Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on TxDOT.

2.10 No Surrender. No mutual agreement to cancel or surrender the CDA or the Lease shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain.

ARTICLE 3
CONTRACT PERIOD

3.1 Term. This Agreement shall become effective when executed by all parties. The Agreement shall terminate upon the occurrence of any of the following:

(a) If the CDA is terminated and the Lender does not have a right to a New Agreement, upon termination of the CDA;

(b) If the CDA is terminated and the Lender does have a right to a New Agreement, upon lapse without proper exercise of the right to obtain a New Agreement;

(c) Upon the Lender or a Substituted Entity that is affiliated with the Lender (or any other participating Lenders) succeeding to the Developer's Interest;

(d) Upon release and reconveyance by the Lender of all or any portion of its security interest in the Developer's Interest;

(e) Upon any change in circumstances rendering the Lender ineligible under the terms of this Agreement (i.e., those corresponding to Section 2.1 of this Agreement) for the rights and protections set forth in this Agreement; or

(f) Upon the natural expiration of the Term of the CDA.

ARTICLE 4
SIGNATORY WARRANTY

4.1 By Lender. The undersigned signatory for the Lender hereby represents and warrants that he or she is an officer of the Lender organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the Lender organization. These representations and warranties are made for the purpose of inducing TxDOT to enter into this Agreement.

4.2 By TxDOT. The undersigned signatory for TxDOT hereby represents and warrants that he or she is an officer of TxDOT and has full and complete authority to enter into this Agreement on behalf of TxDOT. These representations and warranties are made for the purpose of inducing the Lender to enter into this Agreement.

ARTICLE 5
GENERAL PROVISIONS

5.1 Public Information and Confidentiality. TxDOT will comply with Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information related to this Agreement.

5.2 Amendments and Waivers

5.2.1 No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

5.2.2 The exercise by a party of any right or remedy provided under this Agreement or applicable Law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by a party of any right or remedy under this Agreement or applicable Law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or applicable Law. The consent by one party to any act by another party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

5.3 Noncollusion

5.3.1 The Lender warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Lender, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

5.3.2 For breach or violation of this warranty, TxDOT shall have the right to terminate this Agreement without liability.

5.4 Gratuities

5.4.1 Commission policy mandates that employees of TxDOT shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of TxDOT.

5.4.2 Any person doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offer of benefits, gifts or favors to department employees, except as stated above. Failure on the part of the Lender to adhere to this policy may result in the termination of this Agreement.

5.5 Disputes

5.5.1 In the event of any dispute between TxDOT and the Lender under this Agreement, the parties shall resolve the dispute according to the Dispute Resolution Procedures set forth in Article 30 of the CDA, as if set forth in full herein, except that references to "the CDA Documents" shall mean this Agreement, references to "Claim" or "Dispute" shall mean disputes under this Agreement, and other references specific to the CDA shall be similarly construed to refer to comparable terms under this Agreement, with the Lender having the same rights and obligations of Developer under the Disputes Resolution Procedures and having the obligation to enter into an identical Disputes Board Agreement (other than substitution of the Lender for Developer). If, however, any such dispute arises out of the same set of facts and circumstances that gives rise to a Dispute or Claim by Developer, then TxDOT shall have the right, without consent from members of any Disputes Board, to consolidate the disputes, claims and proceedings into one proceeding under the Disputes Board Agreement between Developer and TxDOT.

5.5.2 Nothing in Section 5.5.1 of this Agreement affects Lender rights and remedies against Developer and the Developer's Interest under the Lender's Funding Agreements and Security Documents or the procedures available to the Lender under applicable Law to exercise its security interests thereunder. Nothing in Section 5.5.1 of this Agreement changes or affects the Lender's rights of joinder of TxDOT as a necessary party to the extent provided in Section 3.5.2(j) of the CDA.

5.6 Successors and Assigns. This Agreement shall bind and inure to the benefit of TxDOT and the Lender and their respective successors and assigns. The Lender shall not assign, subcontract or transfer its interest in this Agreement separately from its interests in the Lender's Funding Agreements and Security Documents relating to the loan it has made available to Developer for the Project; and any attempt at such assignment, subcontracting or transfer shall be null and void.

5.7 Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5.8 Prior Contracts Superseded. This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

5.9 Notices and Communications

5.9.1 All notices, correspondence, and other communications under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

5.9.2 All notices, correspondence and other communications to Lender shall be delivered to the following address:

[Lender's Name]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]
E-mail: [●]

5.9.3 All notices, correspondence and other communications to Developer shall be delivered to the following address:

[Developer's Name]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]
E-mail: [●]

5.9.4 All notices, correspondence and other communications to TxDOT shall be marked as regarding the SH 288 Toll Lanes Project in Harris County and shall be delivered to the following address:

Texas Department of Transportation
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]

E-mail: [●]

In addition, copies of all notices regarding disputes shall be delivered to the following person:

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

5.9.5 Notices, correspondence, and communications shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

5.10 Governing Law. This Agreement shall be governed by the laws of the State of Texas.

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

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

[●]

By: _____
Name: [●]
Title: [●]

TxDOT

Texas Department of Transportation

By: _____
Name: [●]
Title: [●]

Collateral Agent

[●]

By: _____
Name: [●]
Title: [●]

EXHIBIT 22
FORM OF D&C DIRECT AGREEMENT

EXHIBIT 22
FORM OF D&C DIRECT AGREEMENT
****

DIRECT AGREEMENT

This D&C Direct Agreement (the "**Agreement**") is made by and between the State of Texas acting by and through the Texas Department of Transportation ("**TxDOT**"); [**DESIGN-BUILD CONTRACTOR**], a [●] ("**Design-Build Contractor**"); [**GUARANTOR(S)**], a [●] ("**Guarantor(s)**"); and **DEVELOPER**], a [●] ("**Developer**"); and collectively, the "**Parties**," for the purpose of facilitating the State Highway 288 Toll Lanes Project in Harris County (the "**Project**").

RECITALS

WHEREAS, by the Comprehensive Development Agreement ("**CDA**") for the Project dated [●], TxDOT has contracted with Developer to carry out the Work.

WHEREAS, by a design and construction contract dated [●] (the "**Design-Build Contract**"), Developer has retained Design-Build Contractor to carry out the Design Work and the Construction Work in relation to the Project.

WHEREAS, by a parent guaranty (the "**DBC Guaranty**"), Guarantor(s) has guaranteed the obligations of Design-Build Contractor under the Design-Build Contract.

WHEREAS, delivery of this Agreement is a condition precedent to the effectiveness of the CDA.

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

1.1 Definitions. Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit 1 to the CDA.

1.2 Recitals Incorporated. The Recitals in this Agreement are part of the terms of this Agreement.

1.3 Contract Documents and Order of Precedence.

1.3.1 Design-Build Contractor shall undertake (for the benefit of TxDOT) to comply with the terms of Section 34.6 of the CDA, as if such terms were incorporated into this Agreement and (for such purpose) references to "Developer" were instead to Design-Build Contractor, with respect to any Intellectual Property that is owned or licensable by Design-Build Contractor and to the extent that any of the following documents are in the ownership or possession of Design-Build Contractor: (a) all Design Documents; and (b) any other information, documents or data acquired or brought into existence or used in relation to the Work or the Design-Build Contract, in each case that is used by or on behalf of any Developer-Related Entity (as defined in the CDA) in connection with the provision of the Work or the performance of Developer's obligations under the Design-Build Contract (the "**DBC Documents**").

1.3.2 Upon a prior written request by TxDOT, Design-Build Contractor agrees to give TxDOT (or those other Persons authorized by TxDOT) access to the DBC Documents and, at TxDOT's expense, to provide copies (including copy negatives and CAD disks) thereof.

1.3.3 Design-Build Contractor warrants to TxDOT that it has used the standard of skill, care and diligence as set out in Section 2.1.1 to see that the DBC Documents (except to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Design Work and the Construction Work will not infringe the rights of any third party.

1.3.4 The following documents comprise the contract documents for this Agreement. In the event of any conflict, ambiguity or inconsistency among the contract documents, the order of precedence shall be as follows: (a) supplemental agreements, change orders, and addenda to this Agreement; (b) this Agreement, including Recitals; and (c) those provisions of the CDA that are explicitly referenced in this Agreement.

1.4 No Effect on CDA. Nothing in this Agreement amends or modifies any of Design-Build Contractor's, Guarantor's(s') or Developer's obligations to TxDOT under the CDA.

ARTICLE 2
TERMS

2.1 Design and Build Contractor's Representations and Warranties.

2.1.1 Design-Build Contractor warrants to TxDOT that it has carried out and will continue to carry out its duties under the Design-Build Contract in accordance with the Design-Build Contract and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill, care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Design-Build Contract in relation to works of similar scope, nature and complexity to the Design Work and the Construction Work. In particular and without limiting the generality of the foregoing Design-Build Contractor covenants with TxDOT that it has carried out and will carry out and complete the Design Work and the Construction Work in accordance with the Design-Build Contract and duly observe and perform all its duties and obligations thereunder.

2.1.2 Design-Build Contractor shall be entitled in any action or proceedings by TxDOT to raise equivalent rights in defense of liability (except for set off or counterclaim) as it would have against Developer under the Design-Build Contract, and shall have no liability under this Agreement that is of greater severity or of longer duration than it would have had if TxDOT had been a party to the Design-Build Contract as joint employer.

2.2 Liability of Partners. Where Design-Build Contractor is a partnership, references in this Agreement to "Design-Build Contractor" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Agreement will be deemed to be joint and several.

2.3 Inspection of Documents. Each of Design-Build Contractor's, Guarantor's(s') and Developer's liabilities under this Agreement will not be in any way reduced or extinguished by reason of any inspection or approval of the DBC Documents or attendance at Project meetings or other enquiry or inspection which TxDOT may make or procure to be made for its benefit or on its behalf.

ARTICLE 3
STEP-IN RIGHTS IN FAVOR OF TxDOT

3.1 Step-In Rights. Each of Design-Build Contractor and Guarantor(s) will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Design-Build Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder (including those with respect to the Payment Bond and/or the Performance Security) without first giving to TxDOT not less than 60 days' prior written notice specifying Design-Build Contractor's grounds for terminating or treating as terminated or repudiated the Design-Build Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Design-Build Contract. Within such period of notice:

3.1.1 TxDOT may give written notice to Design-Build Contractor and Guarantor(s) that TxDOT will thenceforth become Developer under the Design-Build Contract and the DBC Guaranty to the exclusion of Developer and thereupon each of Design-Build Contractor and Guarantor(s) will admit that TxDOT is Developer under the Design-Build Contract and the DBC Guaranty, respectively, and each of the Design-Build Contract and the DBC Guaranty will be and remain in full force and effect notwithstanding any of the said grounds;

3.1.2 If TxDOT has given notice under Section 3.1.1 and Section 3.3, TxDOT shall accept liability for Developer's obligations under the Design-Build Contract and will as soon as practicable thereafter remedy any outstanding breach by Developer which is capable of remedy by TxDOT; and

3.1.3 If TxDOT has given notice under Section 3.1.1 and Section 3.3, TxDOT will from the service of such notice become responsible for all sums properly payable to Design-Build Contractor under the Design-Build Contract accruing due before and after the service of such notice but TxDOT will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to Developer under the Design-Build Contract.

3.2 TxDOT Obligation to Design-Build Contractor and Guarantor(s). Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by TxDOT to Design-Build Contractor, TxDOT will not be under any obligation to Design-Build Contractor or Guarantor(s) nor will Design-Build Contractor or Guarantor(s) have any claim or cause of action against TxDOT unless and until TxDOT has given written notice to Design-Build Contractor and Guarantor(s) pursuant to Section 3.1.1 and Section 3.3.

3.3 CDA Termination Covenants. Each of Design-Build Contractor and Guarantor(s) further covenants with TxDOT that if the CDA is terminated by TxDOT, it will, if requested by TxDOT by notice in writing and subject to Section 3.1.1 and Section 3.1.3 accept the instructions of TxDOT to the exclusion of Developer in respect of its duties under the Design-Build Contract or the DBC Guaranty, as the case may be, upon the terms and conditions thereof and will if so requested in writing enter into a novation agreement whereby TxDOT is substituted for Developer under the Design-Build Contract and the DBC Guaranty.

3.4 Notice of CDA Termination. Developer acknowledges that each of Design-Build Contractor and Guarantor(s) will be entitled to rely on a notice given to it by TxDOT under Section 3.3 as conclusive evidence that the CDA has been terminated by TxDOT.

ARTICLE 4
SIGNATORY WARRANTY

4.1 By Design-Build Contractor. The undersigned signatory for Design-Build Contractor hereby represents and warrants that he or she is an officer of Design-Build Contractor organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of Design-Build Contractor organization. These representations and warranties are made for the purpose of inducing Developer, Guarantor(s) and TxDOT to enter into this Agreement.

4.2 By Developer. The undersigned signatory for Developer hereby represents and warrants that he or she is an officer of Developer organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of Developer organization. These representations and warranties are made for the purpose of inducing Design-Build Contractor, Guarantor(s) and TxDOT to enter into this Agreement.

4.3 By Guarantor(s). The undersigned signatory for Guarantor(s) hereby represents and warrants that he or she is an officer of Guarantor(s) organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of Guarantor(s' organization). These representations and warranties are made for the purpose of inducing Design-Build Contractor, Developer and TxDOT to enter into this Agreement.

4.4 By TxDOT. The undersigned signatory for TxDOT hereby represents and warrants that he or she is an officer of TxDOT and has full and complete authority to enter into this Agreement on behalf of TxDOT. These representations and warranties are made for the purpose of inducing Design-Build Contractor, Developer and Guarantor(s) to enter into this Agreement.

ARTICLE 5
GENERAL PROVISIONS

5.1 Public Information and Confidentiality. TxDOT will comply with Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information related to this Agreement.

5.2 Amendments and Waivers.

5.2.1 No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

5.2.2 The exercise by a party of any right or remedy provided under this Agreement or applicable Law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by a party of any right or remedy under this Agreement or applicable Law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or applicable Law. The consent by one party to any act by another party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

5.3 Noncollusion.

5.3.1 Each of Design-Build Contractor, Guarantor(s) and Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Design-Build Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

5.3.2 For breach or violation of this warranty, TxDOT shall have the right to terminate this Agreement without liability.

5.4 Gratuities.

5.4.1 Commission policy mandates that employees of TxDOT shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of TxDOT.

5.4.2 Any person doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offer of benefits, gifts or favors to department employees, except as stated above. Failure on the part of Design-Build Contractor, Guarantor(s) or Developer to adhere to this policy may result in the termination of this Agreement.

5.5 Disputes.

5.5.1 In the event of any dispute between TxDOT and either Design-Build Contractor or Guarantor(s) under this Agreement, the parties shall resolve the dispute according to the Dispute Resolution Procedures set forth in Article 30 of the CDA, as if set forth in full herein, except that references to "the CDA Documents" shall mean this Agreement, references to "Claim" or "Dispute" shall mean disputes under this Agreement, and other references specific to the CDA shall be similarly construed to refer to comparable terms under this Agreement, with Design-Build Contractor having the same rights and obligations of Developer under the Disputes Resolution Procedures and having the obligation to enter into an identical Disputes Board Agreement (other than substitution of Design-Build Contractor or Guarantor(s) for Developer). If, however, any such dispute arises out of the same set of facts and circumstances that gives rise to a Dispute or Claim by Developer, then TxDOT shall have the right, without consent from members of any Disputes Board, to consolidate the disputes, claims and proceedings into one proceeding under the Disputes Board Agreement between Developer and TxDOT.

5.5.2 In the event of any dispute between TxDOT and Developer under this Agreement, the parties shall resolve the dispute according to the Dispute Resolution Procedures set forth in Article 30 of the CDA, as if set forth in full herein, except that references to "the CDA Documents" shall mean this agreement, references to "Claim" or "Dispute" shall mean disputes under this agreement, and other references specific to the CDA shall be similarly construed to refer to comparable terms under this Agreement.

5.5.3 The rights and benefits conferred upon TxDOT by this Agreement are in addition to any other rights and remedies it may have against Design-Build Contractor, Guarantor(s) or Developer, including without prejudice to the generality of the foregoing any remedies in negligence.

5.6 Successors and Assigns. This Agreement shall bind and inure to the benefit of TxDOT and each of Design-Build Contractor, Guarantor(s) and Developer and their respective successors and assigns. Design-Build Contractor shall not assign, subcontract or transfer its interest in this Agreement separately from its interests in the Design-Build Contract; and any attempt at such assignment, subcontracting or transfer shall be null and void. No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties.

5.7 Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In addition, the Parties shall endeavor in good-faith negotiations to replace any such invalid, illegal, or unenforceable provisions

with valid, legal, and enforceable provisions with the same or comparable economic effect and benefit as such invalid, illegal, or unenforceable provisions.

5.8 Prior Contracts Superseded. This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

5.9 Notices and Communications.

5.9.1 All notices, correspondence, and other communications under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

5.9.2 All notices, correspondence and other communications to Design-Build Contractor shall be delivered to the following address or as otherwise directed by Design-Build Contractor's Authorized Representative (as defined in the CDA):

[Design-Build Contractor's Name]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]
E-mail: [●]

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

[Developer's Name]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]
E-mail: [●]

5.9.4 All notices, correspondence and other communications to TxDOT shall be marked as regarding the 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 (as defined in the CDA):

Texas Department of Transportation

[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]

E-mail: [●]

5.9.5 All notices, correspondence and other communications to Guarantor(s) shall be delivered to the following address or as otherwise directed by Guarantor's(s') Authorized Representative (as defined in the CDA):

[Guarantor's(s') Name]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]
E-mail: [●]

In addition, copies of all notices regarding disputes shall be delivered to the following person:

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

5.9.6 Notices, correspondence, and communications shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

5.10 Governing Law. This Agreement shall be governed by the laws of the State of Texas.

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

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.

TxDOT

Texas Department of Transportation

By: _____
Name: [●]
Title: [●]

Developer

[●]

By: _____
Name: [●]
Title: [●]

Design-Build Contractor

[●]

By: _____
Name: [●]
Title: [●]

Guarantor(s)

[●]

By: _____
Name: [●]
Title: [●]

EXHIBIT 23
FORM OF JOINDER AGREEMENT
*** * * * ***

PROJECT LEASE
STATE HIGHWAY 288 TOLL LANES IN HARRIS COUNTY

This Joinder Agreement (this "**Joinder Agreement**") is made and entered into effective as of [●], by and among the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), [●], a [●] limited liability company ("**Developer**"), and The Bank of New York Trust Company, N.A. (the "**Custodian**").

WHEREAS, TxDOT and Developer have entered into the certain Comprehensive Development Agreement dated [●] (the "**CDA**") pursuant to which Developer has agreed to construct and operate the SH 288 Toll Lanes Project in Harris County described therein (the "**Project**");

WHEREAS, TxDOT and the Custodian have entered into the certain Master Lockbox and Custodial Account Agreement dated as of November 9, 2007 (the "**Master Lockbox and Custodial Account Agreement**");

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT, Developer and the Custodian agree as follows:

1. Defined Terms. Capitalized terms not otherwise defined in this Joinder Agreement shall have the same meaning assigned to such terms in the Master Lockbox and Custodial Account Agreement.

2. Designation of Developer as "Beneficiary". TxDOT hereby designates Developer as a "Beneficiary" under the Master Lockbox and Custodial Account Agreement with respect to the Project and toll revenues arising from the Project which are at any time held by the Custodian under the Master Lockbox and Custodial Account Agreement and which under the terms of Section 31.14.4 of the CDA TxDOT is obligated to direct to be paid to the Custodian. On the date described in Section 31.14.11 of the CDA, Developer's rights as a Beneficiary shall cease and Developer shall deliver to the Custodian written notice of confirmation of termination of Developer's rights as a Beneficiary.

3. Agreements of TxDOT. TxDOT hereby covenants and agrees as follows:

(a) TxDOT will comply with the terms of the Master Lockbox and Custodial Account Agreement and perform the obligations of TxDOT specified in the Master Lockbox and Custodial Account Agreement, including but not limited to, the obligation of TxDOT to direct the Custodian to pay directly to Developer any amount that is in respect of toll transactions on the Project after the Termination Date under the CDA. TxDOT agrees that all funds that it instructs the Custodian to pay to the Developer shall be designated by the Custodian in its transmittal to the Developer as "Toll Revenues from Transponder Transactions or Video Transactions".

(b) TxDOT will enforce the Master Lockbox and Custodial Account Agreement in accordance with its terms and provisions and will not amend, modify or waive any of the terms and provisions thereof which would materially adversely affect the rights of Developer as a "Beneficiary" thereunder.

(c) TxDOT will not terminate or allow to expire in accordance with its terms the Master Lockbox and Custodial Account Agreement unless (i) TxDOT has executed a new Master

Lockbox and Custodial Account Agreement with a replacement custodian on terms and conditions substantially similar to the Master Lockbox and Custodial Account Agreement, or (ii) the date described in Section 31.14.11 of the CDA has occurred.

(d) TxDOT shall deliver to Developer and the Collateral Agent a copy of all notices, certificates, and instructions delivered by or on behalf of TxDOT to the Custodian as and when delivered to the Custodian.

(e) Agreements of Developer. Developer hereby covenants and agrees that it shall have no greater right or interest in and to the funds and accounts created pursuant to the Master Custodial Account Agreement than is provided in the CDA.

5. Agreements of Custodian. The Custodian hereby covenants and agrees as follows:

(a) The Custodian acknowledges that Developer is a "Beneficiary", as that term is used in the Master Lockbox and Custodial Account Agreement, entitled to the rights of a Beneficiary as provided thereunder, including Article VII thereof, and this Joinder Agreement constitutes a Joinder Agreement under the Master Lockbox and Custodial Account Agreement.

(b) The Custodian hereby acknowledges that Developer may from time to time enter into certain Financing Documents pursuant to which Developer has pledged its rights as a "Beneficiary" to secure its various obligations under or related to such Financing Documents. The Custodian acknowledges that the Secured Party acts as agent for various Persons in connection with the exercise of such Person's rights under the Financing Documents.

(c) The Custodian will transfer amounts required to be transferred to Developer as a Beneficiary under Section 2.03 of the Master Lockbox and Custodial Account Agreement as follows or as otherwise from time to time instructed by TxDOT and shall designate such amounts at the time of each transfer as "Toll Revenues from Transponder Transactions or Video Transactions": [●].

6. Agreements as to Toll Revenues. Each of TxDOT, the Custodian and Developer hereby acknowledges and agrees as follows:

(a) The Master Lockbox and Custodial Account Agreement and arrangements thereunder are intended to ensure that (i) toll revenues from operation of the Project do not come into the possession of, or under the control of, TxDOT, the State of Texas, or any other governmental entity of the State of Texas, or become the assets or property of TxDOT, the State of Texas or any such other governmental entity that is subject to constraints imposed by principles of legislative or administrative appropriation, or to treatment as public funds, unless and until the portion of such toll revenues that TxDOT is entitled to receive pursuant to the terms of the CDA is actually distributed to TxDOT from funds deposited into the Master Custodial Accounts, and (ii) toll revenues from the operation of the Project do not become payments, project savings, refinancing dividends or any other revenue under a comprehensive development agreement received by TxDOT or the Texas Transportation Commission for any purposes by virtue of their deposit into any Master Lockbox Account or Master Custody Account or the custodial arrangements evidenced by the Master Lockbox and Custodial Account Agreement.

(b) All toll revenue that accrues from the use of the Project during the period this Joinder Agreement is in effect shall be subject to the respective rights and interests of TxDOT and Developer as set forth in the CDA.

(c) To the extent provided in the Master Lockbox and Custodial Account Agreement, the Custodian will have dominion and control of all toll revenues from operation of the Project for purposes of crediting and transferring such toll revenues from use of the Project to the Developer for deposit as contemplated by the CDA.

(d) If for any reason TxDOT receives any payment for any use of the Project during the period this Joinder Agreement is in effect, all toll revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent for the Custodian and shall not constitute funds of TxDOT or the State of Texas or funds received by TxDOT or the Texas Transportation Commission as payments, project savings, refinancing dividends or any other revenue under a comprehensive development agreement, and TxDOT agrees to promptly remit such payments to the Custodian for handling in accordance with the terms of the Master Lockbox and Custodial Account Agreement.

(e) None of the Master Lockbox Accounts or Master Custody Accounts are accounts or subaccounts established pursuant to Section 228.012 of the Texas Transportation Code.

7. Governing Law. This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8. DRP Governed Agreement. TxDOT and Developer agree that all disputes between them arising under this Joinder Agreement shall be subject to the Dispute Resolution Procedures under the CDA.

Signature Page Immediately Follows

IN WITNESS WHEREOF, the parties hereto have executed this Joinder Agreement by their officers thereunto duly authorized as of the day and year first written above.

TxDOT

Texas Department of Transportation

By: _____
Name: [●]
Title: [●]

Developer

[●]

By: _____
Name: [●]
Title: [●]

Custodian

The Bank of New York Trust Company, N.A.

By: _____
Name: [●]
Title: [●]