EXHIBIT A

DEFINITIONS AND ACRONYMS

"**Act**" has the meaning set forth in ITP Section 1.7.4.

"**Addenda/Addendum**" means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

"**Alternative Financial Concepts**" or "**AFCs**" means the concepts described in ITP Section 3.6.

"**Alternative Technical Concepts**" or "**ATCs**" means the concepts described in ITP Section 3.1.

"**Assumptions Book**" means the data book Proposers must submit with their Financial Models, pursuant to Section 6.4 of Exhibit C to the ITP, which must fully describe all assumptions underlying the financial projections within the Financial Model.

"**Authorized Representative**" has the meaning set forth in ITP Section 2.2.1.

"**Base Scope**" means the transportation facilities and all related structures and improvements to be financed, developed, designed or constructed pursuant to the terms of the CDA Documents, as more particularly described in Section 1 of the Technical Provisions, other than (a) the IH 610 Interchange Work and (b) the General Purpose Lane Capacity Improvements.

"**Benchmark Rate(s)**" has the meaning set forth in ITP Section 5.11.4.

"**Brazoria Project**" has the meaning set forth in ITP Section 1.3.6.

"**BW**" has the meaning set forth in ITP Section 1.3.1(b).

"**Code**" means the Texas Transportation Code.

"**Commission**" means the Texas Transportation Commission.

"**Concession Payment**" has the meaning set forth in Section 7 of Exhibit C to the ITP.

"**Conditional Award**" shall mean the determination by the Commission to proceed with a conditional award of the CDA to the apparent best value Proposer, as more particularly described in ITP Section 5.10.

"**Cost and Pricing Data**" has the meaning set forth in Section 6.7 of Exhibit C to the ITP.

"**Cumulative Toll Revenues**" has the meaning set forth in Section 7.2 of Exhibit C to the ITP.

"**DBEs**" has the meaning set forth in ITP Section 1.2(g).

"**Development Plan Evaluation Subcommittee**" or "**DPES**" means the subcommittee that performs the initial review of the Technical Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.6.

"**Developer**" has the meaning set forth in ITP Section 1.1.

"**Equity Member**" means (a) each entity with a direct equity interest in Proposer (whether as a member, partner, joint venture member, or otherwise), (b) each entity proposed to have a direct equity interest in Developer, and (c) each entity that will hold 10% or greater indirect interest in the Proposer. Notwithstanding the foregoing, if Proposer is a publicly traded company, shareholders with less than a 10% interest in Proposer shall not be considered Equity Members.

"**Evaluation and Selection Recommendation Committee**" or "**ESRC**" means the committee that will review and evaluate the Proposals and make a recommendation to the Steering Committee as set forth in ITP Section 5.6.

"**Evaluation Score**" means the overall total score for the for the Project Development Plan, as described in ITP Section 5.4.2.

"**FHWA**" means the Federal Highway Administration.

"**Financial AFCs**" has the meaning set forth in ITP Section 3.6.

"**Financial Model**" means the tool described at Section 6 of Exhibit C to the ITP that a Proposer will use to calculate projections in support of its Financial Proposal.

"**Financial Model Audit**" has the meaning set forth in ITP Section 5.11.2.

"**Financial Proposal**" means the portion of the Proposal described in Exhibit C to the ITP.

"**Financial Proposal Evaluation Subcommittee**" or "**FPES**" means the subcommittee that performs the initial evaluation of the Financial Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.6.

"**Financial Score**" has the meaning set forth in ITP Section 5.2.

"**Financing Plan**" means the information that Proposers must provide pursuant to Section 5 of Exhibit C to the ITP, which must describe the strength of financial commitments from Lenders and equity investors in detail, including information about timing, amount, terms and conditions of each commitment.

"**FONSI**" has the meaning set forth in ITP Section 1.3.2.

"**IH**" has the meaning set forth in ITP Section 1.3(e).

"**IH 610 Interchange**" means the interchange of IH 610 and SH 288.

"**IH 610 Interchange Option**" has the meaning set forth in Section 1.3.1.

"**IH 610 Interchange Public Funds Payment**" means each payment as set forth in Form K-2, Box 3.

"**IH 610 Interchange Work**" means the re-construction of and improvements to the IH 610 Interchange, and the operation and maintenance of the IH 610 Interchange, as described in the Technical Provisions.

"**Initial Configuration**" means the Base Scope and, if and only if the IH 610 Interchange Option is exercised, the IH 610 Interchange Work.

"**Instructions to Proposers**" or "**ITP**" means the documents and information contained in Volume I and described in ITP Section 1.4.

"**Key Personnel**" means the individuals designated by a Proposer pursuant to Exhibit B, Section 3.2.5 to the ITP.

"**Major Participant**" means each Equity Member and each member of Proposer's organization with: (a) primary responsibility for design; (b) primary responsibility for construction; (c) primary responsibility for providing and/or arranging Project finance; (d) primary responsibility for operations; (e) primary responsibility for maintenance; (f) primary responsibility for designing toll collection systems, ITS, and software; or (g) a proposed subcontract with a value greater than or equal to $10,000,000 (excluding subcontracts with Suppliers).

"**Major Professional Services Firm**" has the meaning set forth in Section 3.2.2 of Exhibit B to the ITP.

"**Model Auditor**" has the meaning set forth in Section 6.9 of Exhibit C to the ITP.

"**NTP**" has the meaning set forth in ITP Section 1.3.3.

"**NTP1**" has the meaning set forth in ITP Section 1.3.3.

"**NTP2**" has the meaning set forth in ITP Section 1.3.3.

"**NTP3**" has the meaning set forth in ITP Section 1.3.4.

"**Option Price Score**" has the meaning set forth in ITP Section 5.5.2.

"**PABs**" means Private Activity Bonds.

"**Post-Selection Deliverables**" means the documents identified in ITP Section 5.12.

"**Preferred Proposer**" means the apparent best value Proposer to which Conditional Award has been made.

"**Pre-Proposal Submittal**" means each submittal required or otherwise permitted prior to the Proposal Due Date as identified in Section 1.6.1 and described in Section 2.11 (regarding changes in a Proposer's organization); Section 2.13 (regarding changes in and new additions to Key Personnel); Section 3.2 (regarding ATCs); Section 3.5 (regarding draft tolling plan); Section 3.6 (regarding AFCs); Section 5.11.2 (regarding the Model Auditor (optional)).

"**Price Score**" has the meaning set forth in ITP Section 5.5.1.

"**Project**" means the TxDOT SH 288 Toll Lanes Project in Harris County described in Section 1.3.1 of the ITP.

"**Project Development Plan**" has the meaning set forth in ITP Section 1.7.1.

"**Proposal**" has the meaning set forth in ITP Section 1.7.1.

"**Proposal Due Date**" means the submission deadline for the Proposal to TxDOT, as set forth in ITP Section 1.6.1.

"**Proposal Revision**" has the meaning set forth in ITP Section 5.8.

"**Proposal Security**" means the proposal bond or letter of credit as described in Section 3.3 of Exhibit B to the ITP.

"**Proposer**" means the entity submitting a Proposal for the Project in response to the RFP.

"**Qualifications Submittal**" or "**QS**" means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by TxDOT.

"**Reference Information Documents**" or "**RID**" means the documents and information included in Volume III and described in ITP Section 1.4.

"**Request for Qualifications**" or "**RFQ**" means TxDOT's Request for Qualifications issued on May 3, 2013, as amended.

"**Request for Proposals**" or "**RFP**" means the set of documents identifying the Project and its Work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/Developer. The RFP includes the ITP, CDA Documents, and Reference Information Documents. The RFP is issued only to Proposers that have been shortlisted following RFQ review.

"**ROW**" means right of way.

"**RFP Website**" has the meaning set forth in ITP Section 2.2.

"**Rules**" has the meaning set forth in ITP Section 2.1.

"**SH**" has the meaning set forth in ITP Section 1.1.

"**Stakeholder**" means parties that may have a stake in the Project by virtue of their location or funding, including cities, counties, United States Department of Transportation, and FHWA and their officers, directors, and employees. For purposes of ITP Section 2.2.3(d), the Texas Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol or traffic law enforcement and other police and public safety services in accordance with applicable Laws and agreements with State and local agencies will not be considered Stakeholders.

"**Steering Committee**" has the meaning set forth in ITP Section 5.9.

"**Structure AFCs**" has the meaning set forth in ITP Section 3.6.

"**TCS Provider**" has the meaning set forth in ITP Section 1.9.1.

"**Technical Proposal**" means the portion of the Proposal described in Exhibit B to the ITP.

"**Technical Score**" has the meaning set forth in ITP Section 5.2.

"**Termination for Convenience Fee Score**" has the meaning set forth in ITP Section 5.5.2.

"**TIFIA**" means the Transportation Infrastructure Finance and Innovation Act.

"**TMC Connector**" has the meaning set forth in ITP Section 1.3.1.

"**Toll System CDA**" has the meaning set forth in ITP Section 1.9.1.

"**Total Proposal Score**" has the meaning set forth in ITP Section 5.2.

For definitions of other initially capitalized terms, see the CDA Documents.

EXHIBIT B

TECHNICAL PROPOSAL INSTRUCTIONS

1 General Instructions

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit B in the organization and format specified herein and in the order set forth in Exhibit E. A copy of the checklist for the Technical Proposal shall be included in the Technical Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

2 Format

The Technical Proposal shall be limited to an aggregate of 100 pages (if double-sided, 50 sheets), plus the executive summary, resumes, appendices and exhibits containing required forms, graphs, matrices, schedule, drawings and other pertinent data.

3 Contents of the Technical Proposal

The Technical Proposal shall consist of the following major elements:

(a) Executive Summary;

(b) Proposer Information, Certifications and Documents (including required Forms A through J, L and Q);

(c) Proposal Security;

(d) Proposer Election and Provision of CDA Terms; and

(e) Project Development Plan.

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with Proposer's Proposal and its ability to satisfy the financial and technical requirements of the Project. The Executive Summary shall not exceed 10 single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

(a) An explanation of the organization and contents of the Proposal;

(b) A summary of any changes to Proposer's QS;

(c) A summary of all Major Participants and identification of any changes in Proposer's organization, Equity Members and Key Personnel since submission of the QS;

(d) A summary of the Project Development Plan including summaries of:

(i) the proposed management, decision making and day-to-day operation structure of Proposer and a statement that each Major Participant has committed to provide the specified people;

(ii) Proposer's approach to quality management of the Project throughout the duration of the CDA;

(iii) Proposer's approach for working with TxDOT and third parties, including the approach to resolving conflicts;

(iv) Proposer's approach to addressing public information and communications for the Project;

(v) Proposer's approach to addressing environmental sensitivity and safety;

(vi) Proposer's schematic and any innovative concepts, approved ATCs and approved AFCs;

(vii) Proposer's approach to addressing ROW acquisitions;

(viii) Proposer's approach to addressing Utility Adjustments;

(ix) Proposer's Preliminary Baseline Schedule, key milestones, anticipated milestones for development, design, construction and commencement of revenue operations and maintenance;

(x) Proposer's approach for delivering the design and construction components of the Project;

(xi) Proposer's approach to construction sequencing, traffic management and mobility during construction;

(xii) Proposer's safety program;

(xiii) Proposer's approach to operations, maintenance and renewal work; and

(xiv) Proposer's approach to toll lane tolling operations addressing toll collection, enforcement, customer relations, toll operations and interoperability with other toll agencies.

3.2 Proposer Information, Certifications, and Documents

3.2.1 Proposal Letter and Additional Documentation

The Proposal shall include the Proposal Letter (Form A). Proposer shall attach to the Proposal Letter the documents and information described on pages 5 and 6 of Form A and shall identify its authorized representative for all purposes relating to the Proposal, including Proposer's rights and obligations under the RFP, negotiations of the CDAs and receipt of any documents returned to Proposer, including the Proposal Security.

The Proposal Letter shall include evidence of signature authorization for each individual executing any Proposal forms.

3.2.2 Information About Proposer, Major Participants, and Other Subcontractors

The Proposal shall include a completed chart on Form B-1, including the names, contact information, role in organization, licensing information and description of work (if applicable) for Proposer and all Equity Members.

The Proposal shall include a completed Form B-2 providing information about Proposer and its team as specified therein.

The Proposal shall include a completed Form B-3 providing information regarding: (i) each Major Participant (excluding Equity Members that do not fall into categories (a) through (g) of the definition of Major Participants); (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance and/or other professional services for development of the Project valued at $2,000,000 or more ("Major Professional Services Firms"); and (iii) all other subcontractors identified by Proposer as of the Proposal Due Date. Proposer is advised that all Major Professional Services Firms must be identified at the time of the Proposal, and that, as a condition to final award and execution of the CDA, the successful Proposer must provide evidence that it and its Major Participants hold all necessary licenses and professional registrations.

The Proposal shall include a list in the form of Form B-4 of the names of all Key Contractors that Proposer intends to use to complete the Work under the CDA.

3.2.3 Responsible Proposer Questionnaire

The Proposal shall include Form C (Responsible Proposer Questionnaire) signed by Proposer. As noted on the form, it may be provided by Proposer on its own behalf and on behalf of Developer and Equity Members, or it may be provided by Proposer on its own behalf and the individual Equity Members on their own behalf. The form executed by Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Equity Members shall be signed by an authorized representative of such Equity Member and the Proposal.

3.2.4 Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each member of Proposer's team that will perform or supervise installation and/or construction Work on the Project, including information for any entity in which such team member holds a substantial interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

3.2.5 Key Personnel

3.2.5.1 Designation of Key Personnel

Each Proposer shall submit a package that includes an original and five copies of the information specified in this Section 3.2.5.1 to TxDOT, by the date and time for submittal of Key Personnel specified in ITP Section 1.6.1, for review and written approval by TxDOT in its discretion. The package shall be delivered to the address set forth in ITP Section 2.2.1, and shall include a list of the proposed Key Personnel for each category identified in Section 3.2.5.2 below, along with copies of resumes for each such person (which must contain the individual's qualifications and relevant work experience) and contact information for three references for each individual.

The Proposal may not include any Key Personnel not previously approved by TxDOT in writing.

Proposer may not make any changes in its Key Personnel after receipt of TxDOT approval as specified in this Section 3.2.5.1, except as provided in the CDA.

3.2.5.2 Information Regarding Key Personnel in the Proposal

The individuals with direct responsibility for each of the following categories of Work are considered Key Personnel:

(a) Overall management of the Project (typically called the Project Manager or Deputy Project Manager);

(b) Overall management and/or control of the Project's finances (typically called the Financial Manager);

(c) Public relations and community outreach (typically called the Public Relations Manager or the Public Information Coordinator);

(d) Design of the Project (typically called the Design Manager);

(e) Construction, coordination of subcontractors and scheduling (typically called the Superintendent or Construction Manager);

(f) Control of quality and implementation and operation of the Project's quality systems (typically called the Quality Manager);

(g) Environmental compliance (typically called the Environmental Manager or the Environmental Compliance Manager);

(h) Safety compliance (Safety Manager)

(i) Project operations, such as traffic control and toll collection (typically called the Operations Manager); and

(j) Project maintenance (typically called the Maintenance Manager).

The Proposal shall identify the pre-approved Key Personnel and shall include Form E identifying personnel work assignments, as well as a statement signed by Proposer and the employer of each designated key person, committing to maintain such individual's availability for and active involvement in the Project. Refer to the CDA for information regarding time commitment requirements for Key Personnel and TxDOT rights if it determines that any such personnel are not devoting sufficient time to the prosecution and performance of the work required for the Project. The Proposal shall also include copies of the resumes and contact information for each of the identified Key Personnel in Form E.

3.2.6 Letter Approving Key Personnel and Changes in Proposer's Organization

The Proposal shall include a copy of the letter(s) issued by TxDOT pursuant to Section 3.2.5.1 approving the Key Personnel. If Proposer's organization has changed since submission of the QS, Proposer shall specifically describe such changes and, if applicable, include a copy of TxDOT's approval letter.

3.2.7 Non-Collusion Affidavit

The Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion.

3.2.8 Certification Regarding Buy America

The Proposal shall include Form G, regarding Buy America requirements.

3.2.9 DBE Requirements

The Proposal shall include a Certification of DBE Goal Attainment or Good Faith Efforts (Form H) certifying conformance with DBE requirements.

3.2.10 Child Support Statement for State Grants, Loans and Contracts

The Proposal shall include Form I regarding child support obligations for Proposer and each Major Participant.

3.2.11 Conflict of Interest Disclosure Statement

The Proposal shall include a certification on Form J describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present or currently planned interest that may present an organizational conflict of interest.

3.2.12 Certification Regarding Equal Employment Opportunity

The Proposal shall include Form Q, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

3.3 Proposal Security

The Proposal shall include either a proposal bond or irrevocable standby letter of credit as specified below.

Forfeiture of Proposal Security in accordance with Section 4.7 of the ITP will constitute liquidated damages. By submitting its Proposal, Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the CDA program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Proposer.

3.3.1 Proposal Bond

If a proposal bond is provided, it shall be in the amount of $10,000,000. The proposal bond shall be in the form of Form L-1 from a Surety rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company. If Conditional Award is made, the successful Proposer will be required to increase the proposal bond to $30,000,000. The increased proposal bond shall be effective at Conditional Award and shall expire on the date that is ten days after the Financial Close deadline set forth in ITP Section 1.6.3. In the event TxDOT commences finalization or negotiation of the CDA with the next highest ranking Proposer, such Proposer will be required to increase its proposal bond to $30,000,000 and extend the expiration date of such bond through the date that is ten days after the Financial Close deadline within five Business Days of notification by TxDOT. If the selected Proposer fails to meet its commitments and/or fails to reach commercial and Financial Close by the applicable deadlines as described in ITP Section 4.7, then the proposal bond shall be forfeited and the funds represented by its proposal bond shall be released to TxDOT and become and remain the property of TxDOT, unless Proposer is excused from performance as set forth in ITP Sections 4.7.2 and 4.7.3.

3.3.2 Letter of Credit

If a letter of credit is provided it shall be in the amount of $10,000,000. The letter of credit shall be in the form of Form L-2 issued by a financial institution with a credit rating of "A" or better according to Standard & Poor's and with an office in Austin, Dallas, Houston or San Antonio at which the letter of credit can be presented for payment. If Conditional Award is made, the successful Proposer will be required to increase the letter of credit to $30,000,000. The increased letter of credit shall be effective at Conditional Award and shall expire on the date that is ten days after the Financial Close deadline set forth in ITP Section 1.6.3. In the event TxDOT commences finalization or negotiation of the CDA with the next highest ranking Proposer, then such Proposer will be required to increase the letter of credit to $30,000,000 and extend the expiration date of such letter of credit to the date that is ten days after the Financial Close deadline within five Business Days of notification by TxDOT. If the selected Proposer fails to meet its commitments and/or fails to reach commercial and Financial Close by the applicable deadlines as described in ITP Section 4.7, then TxDOT may draw against the letter of credit and the funds represented by the letter of credit shall be released to TxDOT and become and remain the property of TxDOT, unless Proposer is excused from performance as set forth in ITP Section 4.7.2 and 4.7.3.

3.3.3 Return of Proposal Security

The Proposal Security for each unsuccessful Proposer, except the Proposal Security which has been forfeited, will be returned to the respective Proposers on the earliest to occur of the following: (i) final award has occurred, (ii) this RFP has been cancelled and (iii) the expiry of such Proposer's proposal validity period (as it may have been extended in accordance with this RFP).

The Proposal Security for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution and award, including the conditions set forth in ITP Section 6.1.

TxDOT may elect to return Proposal Security at an earlier date at its discretion.

4 Project Development Plan

Proposer shall present a Project Development Plan, which shall consist of three components: General Project Management (Section 4.1), Design-Build Management and Technical Solutions (Section 4.2) and Operations and Maintenance Management and Technical Solutions (Section 4.3). The Project Development Plan shall describe the project management philosophy, the plan and schedule for the Project and any related contract administration, and how Proposer plans to achieve and satisfy the Project requirements.

4.1 General Project Management

General Project Management shall set out Proposer's organizational structure and management approach to coordination of all Project activities including design, construction, operations, maintenance (routine and capital), quality, handback, documentation, scheduling, testing and auditing/reporting for the Project, risk analysis and mitigation and community outreach. Information presented shall apply to all phases of the Work. The General Project Management approach shall address the information requested in Sections 4.1.1 through 4.1.7.

4.1.1 Management Structure and Personnel

The General Project Management approach shall describe the proposed overall Project management organization, identifying participating firms, organizations and individuals. It shall include:

(a) An organization chart outlining the structure of Proposer's Project management organization (including the design, construction, operations, maintenance and quality sub-organizations) and a description of the roles allocated, responsibilities, interrelation and Work to be accomplished by each member of the management team and each sub-organization, including identified subcontractors and suppliers (at all tiers);

(b) Information describing how each of the Key Personnel will fit into the organization, including a description of each key person's function and responsibility relative to the Project, and indicating the percent of time that he or she will devote to the Project;

(c) Qualifications and experience required for task managers in each sub-organization reporting to the Key Personnel; and

(d) Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants), and a description of Proposer's plan and overall ability to provide the experienced personnel, equipment and facilities required to successfully complete all aspects of the Project on a timely basis and within any applicable time frames set forth in the CDA and the Technical Provisions.

4.1.2 Schedule, Cost Control, and Risk Management

The General Project Management approach shall describe the proposed Project schedule methodology and include at least the following:

(a) A description of the approach used for preparing, controlling and updating the Project Schedule, for calculating progress performance on a monthly basis and preparing quarterly payment requests;

(b) A description of the approach used for preparing and updating the Schedule of Values;

(c) A description of the approach to integrate subcontract activities into Proposer's scheduling and reporting system;

(d) A description of the approach to managing resources and activities, both its own and subcontractors, in order to achieve Project Schedules, and if necessary, to recover schedule slippage;

(e) A preliminary Project Baseline Schedule and narrative for the Project. The preliminary Project Baseline Schedule shall be a high level Critical Path Method schedule representing Proposer's plan for completing the Work between NTP1 and Final Acceptance and the Milestone Schedule requirements set forth in Exhibit 8 to the CDA. The schedule must show no more than 860 days from NTP2 until Service Commencement of all Project Segments. Proposer's preliminary Project Baseline Schedule submission shall not limit, modify or alter TxDOT's ability to review and approve the preliminary Project Baseline Schedule, and selection of a Proposer shall not be deemed to be acceptance or approval of Proposer's preliminary Project Baseline Schedule;

(f) The preliminary Project Baseline Schedule, which shall be in the form described in the Technical Provisions and shall include at least the following:

i. Schedule Activities representing all Design Work to the WBS Level as set forth in Table 2-2 of Section 2 of the Technical Provisions.

ii. Schedule Activities representing all Construction Work to the WBS Level as set forth in Table 2-2 of Section 2 of the Technical Provisions.

iii. Individual resource and cost loaded Schedule Activities, designated as a Payment Activity at WBS Level as set forth in Table 2-2 of Section 2 of the Technical Provisions.

iv. When assembling the entire preliminary Project Baseline Schedule, the Payment Activities would equal the Total Project Construction Costs (Form O, Box D)

v. A separate copy of the preliminary Project Baseline Schedule with the costs deleted but still containing any assigned resources.

vi. A preliminary Renewal Work Schedule to include all Renewal Work and all O&M Work subsequent to each Operating Commencement Date.

(g) Description of Proposer's document, cost control and schedule management system to be used to control, review and coordinate the cost and schedule of the Work during the term of the CDA, including during design, construction, installation, operations and maintenance;

(h) Description of Proposer's approach to identify, assess, manage, mitigate and allocate Project-specific risks. The Proposal shall include at a minimum:

i. Identify significant risk categories, such as, capacity, planning, design, construction completion, operations, maintenance, demand, inflation, financing, legislative policy, technology, and residual value;

ii. Describe the potential consequences of the identified risks;

iii. Describe the probability of identified risks;

iv. Propose procedures and tools to conduct a risk sensitivity analysis; and

v. Provide a proposed or desirable allocation of risks among Proposer and its team members.

4.1.3 Environmental Management

The General Project Management approach shall describe the management approach to environmental compliance and permitting. The approach shall:

(a) Describe applicable qualifications and experience of the Environmental Compliance Manager and the Environmental Team described in the Technical Provisions;

(b) Describe the approach to develop the component parts of the Comprehensive Environmental Protection Program described in the Technical Provisions;

(c) Identify applicable laws, rules and regulations;

(d) Identify the environmental commitments, permits, mitigation, potential re- evaluations and documentation, necessary to complete the Project;

(e) Describe Proposer's methods to develop Environmental Permit, Issues and Commitment (EPIC) sheets and ensure those permits, issues and commitments are integrated into design, construction, operations and maintenance; and

(f) Identify potential environmental risk and describe the approach to mitigate, eliminate or reduce those risks.

4.1.4 Safety and Health

The safety component of the General Project Management approach shall include a description of the preliminary Safety and Health Plan, meeting the requirements set forth in the Technical Provisions, including at least the following:

(a) A description of the role and responsibilities of the Safety Manager and safety staff, the hierarchical relationship between the Safety Manager and other managers, supervisors, and employees, and how responsibility and accountability for safety will be incorporated at all levels;

(b) A description of Proposer's approach to identifying, developing and providing relevant training for employees and supervisors;

(c) A description of Proposer's approach to safety procedures, including incident response plans and systems for reporting and responding to hazardous conditions, and how such procedures will ensure the safety and health of personnel involved in the Project and the general public affected by the Project;

(d) The procedures Proposer will use to immediately notify TxDOT of all incidents arising out of the performance of the Work, and Proposer's approach to communication and coordination of incident response and emergency management with TxDOT and other involved agencies;

(e) A description of how Proposer's approach to safety will account for the unique attributes of this Project, including but not limited to, the urban environment, the heavy traffic conditions and the size and scope of the Project; and

(f) A description of Proposer's safety goals and its approach to evaluating the effectiveness of policies and measuring success in meeting the goals.

4.1.5 Organizational Systems

The General Project Management approach shall describe the organizational systems to be used by Proposer, and shall include:

(a) A detailed description of how Proposer's team members will work together to provide a unified design, construction, operations, maintenance and quality approach to all elements of the Work;

(b) A description of Proposer's team decision-making process, how internal disputes between team members will be resolved, and how Proposer will avoid adverse impacts to the Project (cost, schedule or quality) in the event of such disputes;

(c) A description of the methods to be used to establish lines of communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel;

(d) A description of how the quality process will be structured for the Project, and how the quality process will function independently of design, construction, operations and maintenance; and

(e) A description of how Proposer intends to interface with TxDOT, its consultants, applicable third parties, and relevant federal, State and local agencies on all matters including planned transportation and utility infrastructure in the project area.

4.1.6 Public Information and Communications

The public information and communications component of the General Project Management approach shall include:

(a) Qualifications and experience of proposed staff members who will be engaged for purposes of public information and community outreach; and

(b) A preliminary Public Information and Communications Plan (PICP) which presents the approach to addressing all items of the PICP as referred to in the Technical Provisions.

4.1.7 Mentoring and Job Training

The General Project Management approach shall include:

(a) A description of Proposer's concept to utilize and train DBEs, including:

(i) A description of standard subcontracting methods to effectively manage subcontractor performance as they relate to the Technical Provisions;

(ii) An outline of areas of work where DBEs may be utilized; and

(iii) A description of the training program to be utilized to educate and train employees in various job functions as well as training for environmental and Site specific issues.

(b) A description of Proposer's approach to mentor DBEs and other small businesses, including:

(i) Eligibility criteria for participation in the program;

(ii) Program goals for mentoring on Public Private Partnerships, design, construction, operations and maintenance;

(iii) A mentoring program for educational workshops, including the following:

A. A description of targeted technical disciplines;

B. Identification of specific audiences;

C. Development of a short-term plan;

D. Development of a long-term plan;

E. Identification of workshop administrative procedures;

F. Identification of frequency of the workshops;

G. Educational workshops for bonding and insurance requirements; and

H. Procedures and methodologies for dividing work into economically feasible units to encourage small business participation.

(c) Criteria for evaluating effectiveness of the small business program.

(d) A description of Proposer's individual job training program to assist with developing women and minorities in the "critical crafts" designated annually by TxDOT. The program shall include training goals for on-site and off-site, the cost of training and a schedule for training. The schedule for training shall include job classifications, number of trainees per classification and the anticipated start times in each classification.

4.2 Design-Build Management and Technical Solutions

Design-Build Management and Technical Solutions shall present Proposer's approach to Design-Build Management, Design-Build Quality Management and Proposer's Design-Build Technical Solutions as required in Section 4.2.1 through 4.2.3.

4.2.1 Design-Build Management

The Design-Build Management approach shall provide a description of Proposer's approach for performing design and construction on the Project, including at a minimum the following:

(a) A description of the management approach for development and coordination of design, including integrating related issues such as right of way, survey, environmental permitting, utilities and community relations;

(b) A description of the proposed approach for delivering the design for the Project, including where the designers will be located and how designs developed by different firms and offices will be integrated and coordinated to ensure consistency and quality;

(c) A description of the management approach for construction, including how design will be integrated with construction and how the Work will be divided and controlled; and

(d) A description of how Proposer will manage staged construction, including how it will simultaneously manage construction with ongoing operation and maintenance activities.

4.2.2 Design-Build Technical Solutions

The Design-Build Technical Solutions shall include information identified herein relevant to Proposer's schematic and proposed approach to construction sequencing and traffic management, drainage and utilities, subsurface elements, roadways, bridges and surface structures, toll lane tolling system, Intelligent Transportation Systems (ITS), signing, delineation, pavement markings, signalization and lighting, and aesthetics that meet the requirements set forth in Sections 4.2.2.1 through 4.2.2.8.

Proposer's schematic shall be presented in English units on 18-inch by 120-inch scroll plots at a scale of 1 inch = 200 feet and shall clearly identify the Work to be completed for the Project. Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number, and shall describe how the ATC is used and provide cross-references to other elements of the Proposal that are affected by the ATC. Each Proposer shall also identify characteristics of its Proposal and schematic which vary from TxDOT's Schematic (provided in the Reference Information Documents) or which exceed Project requirements. Further, Proposer may provide supporting documentation for the change outlining the overall benefits to the Project. Responsibility for changes in alignments or other elements proposed by Proposer's schematic is addressed in the CDA.

4.2.2.1 Roadway

Roadway concepts shall include:

(a) Proposer's approach to pavement design including details of the proposed design method, material types, roadway classifications, traffic loading and design life considerations; and

(b) A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project.

Proposer's schematic shall include:

(a) General Project roadway information including Project limits, design speeds, functional classification(s), and minimum design values met;

(b) Project horizontal alignments including PI station/location, degree of curve, radius, length of curve, PC and PT (graphical location) and bearings;

(c) Project planimetrics including curbs and barriers, driveways, edge of pavement, and surface roadways' edge of shoulders;

(d) Directional arrows indicating the number of lanes;

(e) Proposed ROW limits and control of access limits;

(f) Project profiles including existing/natural ground, vertical clearance, grades, VPI station, vertical curve length and K-values;

(g) Typical sections including existing ground, pavement cross slope, super elevation, lane and shoulder widths, and slope ratio for fills and cuts; and

(h) The location and text of the project general purpose and toll lanes guide signs.

4.2.2.2 Construction Sequencing and Traffic Management

The Proposal shall include a description of the construction staging and traffic control and sequencing proposed to accommodate traffic during the construction of the Project. The construction traffic control shall include the following:

(a) The overall traffic management and control and sequencing approach;

(b) Conceptual construction staging diagrams including initial and ultimate proposed treatment of ramps and staging of major drainage trunk line(s);

(c) A description of how business and residential accesses will be provided;

(d) A narrative description of how Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities and traveling public while still providing acceptable construction performance;

(e) A description of the intended laydown, recycling, staging, disposal and maintenance locations to be used during construction; and

(f) A description of how the right of way and adjacent roads and properties will be maintained and protected, including the intended measures to be used to mitigate and minimize noise, vibration, light, dust, erosion/run-off and local road damage.

4.2.2.3 Drainage

The Proposal shall provide a description of the drainage for the Project. For the drainage related to the Project, the Proposal is to include:

(a) A description of the overall surface water collection system identifying the proposed location of major drainage trunk lines and outfall locations to accommodate the Project;

(b) Exhibit drawings (scale: 1 inch = 200 feet) of Proposer's design for conveying runoff through the facility to discharge points; and

(c) Exhibit drawing(s) defining the approximate limits of temporary construction easements and drainage easements necessary for completion of the Project drainage work.

(d) A description of the detention required for the Project and exhibit drawings of Proposer's detention locations.

4.2.2.4 Bridges and Surface Structures

The Proposal shall provide a description of the bridges and surface structures (representative retaining and noise walls) for the Project, including at least the following:

(a) Proposer's schematic shall include:

(i) Sufficient detail to indicate bridge locations and limits, bridge types, foundation types, controlling vertical clearances and typical span arrangements; and

(ii) Preliminary wall types, proposed locations and limits for retaining and noise walls.

(b) Proposer shall include the following:

(i) An exhibit of the bent placement near restricted substructure placement areas. The exhibit shall depict the restricted substructure placement areas;

(ii) Drawings detailing the proposed structures' conformance to the aesthetic requirements of the Project; and

(iii) A description of methodology for design and construction at railroads and the Proposer's plan for coordination with the operating railroad.

4.2.2.5 Tolling and ITS Systems

The Proposal shall include the following information pertaining to tolling and ITS systems:

(a) A description of the toll lane tolling system for the Project. The information shall include at least the following:

(i) A toll collection methodology that includes a schematic plan showing tolling points, informational signing and other pertinent information.

(ii) A preliminary approach to the Electronic Tolling Collection System (ETCS) Plan, including how the ETCS meets or exceeds the functional requirements. The description shall also include hardware and software specifications to describe all of the aspects of the system and its functionality.

(iii) A description of the proposed secure network communications system.

(b) A preliminary Project Segment Plan that provides:

(i) A description of the proposed Project Segment lengths and locations and how the proposed Project Segments tie into existing infrastructure;

(ii) A description of the anticipated schedule for opening each Project Segment; and

(iii) A drawing depicting (A) the proposed Project Segment limits; (B) Toll Lanes permanent logical termini and Project Terminals; and (C) General Purpose Lane and other infrastructure transitions to exiting infrastructure.

(c) A description of the Intelligent Transportation Systems for the Project. The information shall include at least the following:

(i) A schematic plan and layout showing the locations of ITS equipment, including cameras, DMS signs, traffic monitoring stations and lane marking points.

(ii) A description of how the system will be monitored and connected to area traffic management centers to maintain interoperability for monitoring and control of subsurface systems.

(iii) A description of the approach to coordinating information with TxDOT and other ITS systems in the region and for the incorporation into the Houston-Galveston Regional ITS Architecture.

4.2.2.6 Signing, Delineation, Pavement Markings, Signalization and Lighting

The Proposal shall provide a description of the signing, delineation, pavement markings, signalization and lighting for the Project. The information shall include at least the following:

(a) A preliminary operational guide signing schematic formatted for TxDOT approval; and

(b) A general description of the approach for striping, signalization and lighting of the facility.

4.2.2.7 Buildings and Enclosed Facilities

The Proposal shall provide a description of the buildings and enclosed facilities for the Project. The information shall include at least the following:

(a) Identification of all proposed buildings, enclosed facilities and associated items, along with a general description of the function of each of the facilities.

(b) A description of the proposed approach to minimize the impact that each of the buildings, enclosed facilities and associated items may have on the surrounding communities.

4.2.2.8 Aesthetic and Landscape Design

The Proposal shall provide the following related to the aesthetic design for the Project:

(a) A preliminary Aesthetic and Landscaping Plan, including a description and concept drawings showing Proposer's approach for implementing the Green Ribbon Project Guidelines;

(b) A description and concept drawings of additional aesthetics items proposed to be completed as a portion of Proposer's work; and

(c) A description of how Proposer plans to work with TxDOT to enhance the design and aesthetic details.

4.2.3 Design-Build Quality Management

The Design-Build Quality Management approach shall describe Proposer's quality approach to design and construction for the Project, including at least the following:

(a) For the design quality component associated with the preliminary Quality Management Plan, a description of the design deliverable process, a description of the internal process for design reviews, a description of quality assurance and quality control functions, and an explanation of how the Independent Engineer will be involved. The design quality component shall also present Proposers approach to reporting relationships and responsibilities, including TxDOT oversight procedures to be implemented; conformance with federal oversight requirements; how design quality management will be documented; and how changes will be made to correct design deficiencies; and

(b) For the construction quality component associated with the preliminary Quality Management Plan, a description of the approach to acceptance testing and inspection, an explanation of how the Independent Engineer will be involved, and how construction deficiencies and non-compliance issues will be documented and corrected. The construction component of the preliminary Quality Management Plan shall also describe how the program will integrate with the design activities, including TxDOT oversight and all quality-related activities and conformance with federal oversight requirements.

4.2.4 Right of Way Acquisition and Utility Adjustment Management and Approach

The right of way and utility adjustment management and approach shall describe Proposer's approach to performing right of way services and a description of utility work required for the Project. The information shall include at least the following:

(a) For right of way services for the Project, Proposer is to include:

(i) The approach describing how the acquisition of right of way and any necessary relocation service will be managed by Proposer in conjunction with TxDOT, local officials and the Office of the Attorney General. The approach must also describe how acquisition of right of way will be incorporated into the Project schedule to avoid delays.

(ii) A description of the quality control methods that Proposer will employ to assure that all property owners' rights under the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, are being satisfied, including without limitation, the safeguards and policies Proposer will implement to ensure, that no coercive actions, as describe in 49 CFR 24.1029h), will result from advancing a portion of right of way to the construction stage or any other action that may be undertaken that could adversely affect the right of way acquisition process.

(iii) A description of the acquisition and relocation process that will maintain the project schedule but be sensitive to the needs and concerns of property owners, lessees, licensees and other occupants.

(b) For utilities related to the Project, Proposer is to include:

(i) Proposer's approach to identifying, verifying and documenting the presence and locations of subsurface utilities that may impact or be impacted by the Work.

(ii) The intended means of communication and planning of construction to keep Utility Owners informed of the construction schedule, the means of construction and changes that may affect their facilities.

(iii) The methods of design and construction related to utility relocation and protection.

(iv) The proposed methods to minimize utility conflicts during design and construction and the approach for managing conflicts.

(v) The proposed methods to facilitate cooperation from Utility Owners, including without limitation the approach to negotiating utility adjustment agreements and resolving betterment issues.

(vi) Proposer's approach to/knowledge of when utility relocation/upgrade/replacement is paid for by utility and when Proposer will be liable for costs.

4.3 Operations and Maintenance Management and Technical Solutions

Operations and Maintenance Management and Technical Solutions shall present Proposer's approach to Operations and Maintenance Management, Operations and Maintenance Quality Management, and Proposer's Operations and Maintenance Technical Solutions as required in Sections 4.3.1 through 4.3.3.

4.3.1 Operations and Maintenance Management

The Operations and Maintenance Management approach shall provide a description of the proposed approach to operating and maintaining the Project, including at least the following:

(a) A preliminary Operations Management Plan, which presents Proposer's approach to meeting the Project's operations obligations as described in the Technical Provisions and a description of the procedures to be established for monitoring the condition and operational performance of the Project.

(b) A preliminary Maintenance Management Plan, which presents Proposer's approach to meeting the Project's maintenance obligations as described in the Technical Provisions and the approach to processes and procedures for the maintenance of the Project over the Term of the Agreement.

(c) The approach to operations and maintenance prior to, during transition to, and following each Service Commencement, and specifically during transition from the end of the Design-Build phase to the Operating Period.

4.3.2 Operations and Maintenance Technical Solutions

The Operations and Maintenance Technical Solutions shall include information identified herein relevant to Proposer's approach to roadway operations, toll lanes tolling operations, routine maintenance and renewal work as set forth in Sections 4.3.2.1 through 4.3.2.4.

4.3.2.1 Roadway Operations

The Proposal shall describe how the daily roadway operations functions will be handled including:

(a) The detection and response to emergencies, hazardous weather, breakdowns, accidents, and incidents;

(b) The approach for liaising and handling emergency services;

(c) The approach to traffic management and operation of ITS systems;

(d) A description of the approach to accident analysis and implementation of improvements to user safety; and

(e) The approach to policing the roadway.

4.3.2.2 Toll Lanes Tolling Operations

The Proposal shall provide a preliminary tolling plan, which shall include, at a minimum, the following items:

(a) A description of the toll lanes tolling operations, including implementation of tolling operations related to the Project Segment Plan;

(b) Limits of proposed Toll Segments;

(c) The locations of toll gantries;

(d) Proposed toll rates after the first 180 days;

(e) Declaration zone locations;

(f) Location of enforcement zones;

(g) Required enforcement equipment;

(h) A description of the methods for performance monitoring; and

(i) A description of the parameters to be used for setting, increasing and decreasing tolls to optimize traffic volumes in the toll lanes.

4.3.2.3 Routine Maintenance

For routine maintenance, the following maintenance items shall be addressed, including:

(a) A description of the approach used for life cycle cost analysis over the Term of the CDA, including how material durability will be determined and price variation (i.e. future energy costs, future labor costs, etc.) will be assessed;

(b) Details and locations of maintenance yard(s) and facilities;

(c) A preliminary list of specialized maintenance equipment proposed for use throughout the life of the Project;

(d) A description of the approach to supply and management of maintenance spare parts;

(e) The approach to general sweeping, cleaning and removal of debris, abandoned vehicles and graffiti;

(f) The approach to traffic management during maintenance work;

(g) The approach to inspection and testing of Project items and the identification, classification and rectification of defects and inspection failures; and

(h) A description of the system to be used for maintaining accurate as-built records, and records of inspections and maintenance activities.

4.3.2.4 Renewal Work

The Proposal shall describe the approach to Renewal Work, including the processes that will be employed for developing a rolling program of major maintenance repairs and/or replacements. The information shall describe the approach to programming of works and costing and ensuring that handback requirements will be met.

4.3.3 Operations and Maintenance Quality Management

The Operations and Maintenance Quality Management approach shall describe Proposer's quality program approach to operations and maintenance for the Project, including at least the following:

(a) Proposer's approach to operations quality management, including a description of quality assurance and quality control functions, an explanation of how the Independent Engineer will be involved, and Proposers approach to reporting relationships and responsibilities, including TxDOT oversight procedures. The approach shall also include a description of the internal process for preparing and reviewing incident reports, non-conformance reports, traffic reports and maintenance work reports, and how non-compliance issues will be documented and corrected; and

(b) Proposer's approach to maintenance quality management, including a description of quality assurance and quality control functions, an explanation of how the Independent Engineer will be involved, and Proposers approach to reporting relationships and responsibilities, including TxDOT oversight procedures. The approach shall also include a description of how the quality process will be integrated into maintenance inspections to effect changes, as necessary, in maintenance procedures and performance.

EXHIBIT C

FINANCIAL PROPOSAL INSTRUCTIONS

1 General Instructions

The required contents and organization of the Financial Proposal are presented in this Exhibit C and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit C in the organization and format specified herein and in the order listed in Exhibit E. Each component of the Financial Proposal shall be clearly titled and identified. A copy of the checklist for the Financial Proposal shall be included in the Financial Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

2 Format of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts shall be clearly identified as real or nominal dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between the sum of the individual line amounts and totals, the individual line amounts will prevail.

3 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial terms, including the Price Proposal (Form K-1, Form K-2 and Form K-3), Termination for Convenience Fee Amounts (Form P) and Revenue Payment Calculation (Form S-1 and Form S-2), are to be included in the Financial Proposal.

4 Financial Capacity Information

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the QS.

To the extent not previously provided to TxDOT, the Financial Proposal shall include the following information for Proposer, Equity Members, Guarantors and the Lead Contractor:

(a) Audited financial statements for all periods subsequent to those previously submitted to TxDOT during the procurement process, audited by a certified public accountant in accordance with U.S. GAAP.

(b) Interim unaudited statements for the period since the most recent completed fiscal year excluding those previously submitted to TxDOT during the procurement process.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

(a) Financial statement information must include:

(i) Opinion Letter (Auditor's Report)

(ii) Balance Sheet

(iii) Income Statement

(iv) Statement of Changes in Cash Flow

(v) Notes to the financial statements.

(b) Financial statements must meet the following requirements:

(i) **U.S. GAAP or IFRS –** Financial statements must be prepared in accordance with U.S. GAAP or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS.

(ii) **U.S. Dollars** – Financial statements must be provided in U.S. dollars. If financial statements are not available in U.S. dollars, Proposer must include summaries of the Income Statements and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant, and the basis for the rates must be disclosed.

(iii) **Audited** – Fiscal year end financial statements must be audited by an independent party qualified to render audit opinions (e.g. Certified Public Accountant). If audited financials are not available for an Equity Member, include unaudited financial statements for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.

(iv) **English** – Financial statement information must be prepared in English. If audited financial statements are prepared in a language other English, translations of all financial statement information must be provided.

3. To the extent not previously provided to TxDOT, Proposer must provide the following information:

(i) **Newly Formed Entity.** If Proposer is a newly formed entity and does not have independent financial statements, financial statements for the Equity Members shall be provided (and Proposer shall expressly state that Proposer is a newly formed entity and does not have independent financial statements).

(ii) **Guarantor Letter of Support.** If financial statements of a parent company or affiliate company ("Guarantor") are provided to demonstrate financial capability of Proposer or Equity Members, an appropriate letter from the Guarantor must be provided stating that it will guarantee all the obligations of Proposer or Equity Members with respect to the Project. If a Guarantor is included, the Proposer must still provide the information required of each Equity Member in addition to providing information about the Guarantor. Proposers shall note that TxDOT may, in its discretion based upon the review of the information provided, specify that an acceptable guarantor is required, in which case the information required of such Guarantor or additional Equity Member shall be submitted upon request by TxDOT.

(iii) **SEC Filings.** If any entity for whom financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. Also, for all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K. If any of these reports have previously been submitted to TxDOT during the procurement process, they are not required to be resubmitted.

(iv) **Credit Ratings.** Each rated Proposer, Equity Member and Guarantor must provide confirmation that no changes have occurred in its credit ratings and that it has not been notified of any pending rating change since the QS submission.

(v) **Off-Balance Sheet Liabilities.** A letter from the certified public accountant, chief financial officer, treasurer or certified public accountant for each entity for which financial information is submitted, identifying, as applicable, each off-balance sheet liability exceeding $10,000,000 and its associated dollar amount and providing explanation for off-balance sheet treatment.

(vi) **Material Changes in Financial Condition.** A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the QSs and those that are pending. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date as such information becomes public. The following list identifies certain items that TxDOT would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of TxDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. Where a material change will have a negative financial impact, the affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the periods between submission of the QSs and the most recent completed periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

<u>List of Representative Material Changes</u>

A. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;

B. A change in tangible net worth of 10% of shareholder equity;

C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;

D. A change in credit rating for the affected entity, a related business unit or parent corporation of the affected entity;

E. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations or additional credit support from shareholders or other third parties;

F. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity; and

G. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition since submission of the QS or may be pending for the next reporting period.

The information required under this Section 4 shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role, if any, in Proposer's organization (i.e., Equity Member, lead design firm, subcontractor, etc.).

5 Financing Plan

5.1 Range of Financing Sources

Proposers shall describe their Financing Plan and provide supporting evidence of the commitments from Lenders and Equity Members by addressing:

(a) senior debt finance;

(b) mezzanine debt finance;

(c) equity and quasi-equity finance (including subordinated debt or loan stock);

(d) any other forms of finance;

(e) identity of the investors;

(f) identity of lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/commitments;

(g) type and purpose of each funding source and facility;

(h) the proposed steps and timeframes for reaching financial close; and

(i) Discussion of the tax analysis assumed in the financial model encompassing federal, state, local and foreign taxes, including assumptions, tax structure of the special purpose vehicle, treatment of asset classes, etc.

5.2 Details for Lenders and Lender Support Letters

A Financing Plan may be based entirely on committed debt instruments, entirely on uncommitted debt instruments or on combinations of the two. For each separate bank, loan facility, TIFIA loan, uncommitted bank loan facility or other debt instrument (including capital market debt, working capital, guarantee and standby facilities) included in the Financing Plan, Proposers shall provide, as applicable:

(a) Identity of lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/commitments or an indicative letter of support from all lead arrangers, lead managers and/or underwriting banks and/or debt providers indicating their view that, subject to due diligence, credit approval, final credit documents and then current market conditions, the debt funding described in the Financing Plan and reflected in the Financial Model is reasonable for the purpose of fulfilling Proposer's commitments, while also acknowledging that the terms of the CDA would not have to be altered. An indicative letter of support is not required from the TIFIA Joint Program Office;

(b) Type and purpose of facility;

(c) Amounts to be provided/approved or sought by each Lender and currency in which it will be provided;

(d) To the extent available, terms and conditions attaching to the loan such as conditions precedent to drawdown, principal covenants (including details of cover ratios), refund policy of any commitment fees in the event the CDA is terminated prior to financial close and any and default provisions;

(e) Drawdown schedule, capitalized interest period, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts;

(f) Interest rates (whether fixed or floating) specifying base rate and margins and the reference interest rates that are relevant to the Proposal;

(g) Any proposed hedging arrangements in relation to interest rate risks or loan/funding amounts denominated in currencies other than U.S. dollars;

(h) Average life of debt;

(i) All commitment, arrangement and other fees, if any, necessary for Proposer to provide the deliverables required prior to financial close (excluding financing efforts and deliverables), as set forth in the CDA. The amount of these commitment fees, if any, shall be inserted into CDA Exhibit 7;

(j) Arrangement and other fees;

(k) Identity of monoline insurers, if any, as well as terms and provisions, if proposed for specific debt instruments;

(l) A letter from one rating agency providing indicative ratings on Senior Debt and TIFIA Loan, if applicable, such letter to include information on the assumptions used in establishing the rating;

(m) An opinion letter from the Proposer's traffic and revenue forecasting firm stating that the base case traffic projections are reasonable and the report is acceptable for use in financing the Project;

(n) Evidence of the Lender's review and acceptance, in principle, of technical, legal and insurance due diligence reports;

(o) Evidence of the Lender's review and acceptance, in principle, of the Traffic & Revenue report from the Proposer's Traffic & Revenue forecasting firm;

(p) Any other information which would be relevant to specific forms of debt finance; and

(q) A detailed timetable setting out the expected period for negotiation and signing of the debt facilities.

The Financial Proposal is to include one or more support letters from proposed Lender(s) and monoline insurers (if applicable) confirming the Lender's willingness to provide the funding or the monoline insurer's willingness to provide insurance as described in Proposer's Financing Plan and shall describe any conditions that will need to be met prior to receipt of funds or the receipt of insurance proceeds, as applicable. Such letters of support must include evidence of authorization from the Lender's board or credit committee as appropriate. PABs underwriting letters of support must include evidence of authorization from the underwriter committee. If such PABs-related support letters of financial commitment are not available from the proposed Lenders to include with the Financial Proposal submission, the requirement for Lender's support letters of financial commitment related to PABs may be waived for the Financial Proposal at the discretion of TxDOT.

5.3 Details of Equity Source and Equity Member Members Letters

For each equity source, Proposers shall provide:

(a) Identity of the investors. In cases where the equity is contributed by a fund please identify fund managers and general characteristics of the fund investors and the percentage of participation;

(b) The amount of funds the equity provider is to commit (e.g., shareholder capital, shareholder loans) and the timing of such subscription; and

(c) The terms and conditions of the subscription, including dividend rights attaching to shares, the extent to which funds are committed and the length of time funds will remain in the project vehicle.

Sufficient documentation must be submitted that provides assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding. The Proposal shall also include certified copies of the board minutes or other written evidence of approval of the contents of the Financial Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval.

5.4 Financial Advisor Letter

The Proposal shall include an opinion letter from Proposer's Project Finance Lead or Financial Advisor indicating in their professional view the Financial Proposal is achievable and sufficient to fulfill Proposer's commitments as set out in the Proposal.

5.5 Schedule for Commercial and Financial Close

The Financing Plan shall include a detailed schedule for completing activities and deliverables necessary to reach commercial and financial close, taking into consideration the review period for deliverables set forth in ITP Section 5.12.3. The schedule shall reflect Proposer's estimated date for commercial and financial close, which may not be after the last applicable deadlines set forth in ITP Sections 1.6.2 and 1.6.3.

5.6 Financial Summary Form

Proposer shall submit a completed Form R-1 for the Base Scope only (without the IH 610 Interchange Work). Such form shall be submitted to TxDOT with the Proposal in a sealed envelope, clearly labeled "[Proposer's Name] – Form R-1 for the TxDOT SH 288 Toll Lanes Project in Harris County – Financial Summary".

Proposer shall submit a completed Form R-2 for the Initial Configuration with the IH 610 Interchange Work. Such form shall be submitted to TxDOT with the Proposal in a sealed envelope, clearly labeled "[Proposer's Name] – Form R-2 for the TxDOT SH 288 Toll Lanes Project in Harris County – Financial Summary".

5.7 Feasibility of Financing Plan

Proposers shall ensure that their Financing Plans are sufficiently developed and have attracted sufficient support and commitment from Lenders and investors, to satisfy TxDOT that there is no material risk on financial grounds that:

(a) Proposer will fail to enter into a CDA on the terms in the RFP;

(b) Proposer will fail to provide the Concession Payment to TxDOT in accordance with the dates and terms set forth in the CDA; and

(c) Senior lenders will not accept the terms of any proposed TIFIA financing substantially as set forth in the indicative term sheet. If such assurance regarding acceptability of TIFIA financing is not available, Proposer shall describe its alternative approach to achieve Financial Close.

Subject to compliance with the RFP, the suitability or desirability of different funding solutions in each Proposal to be submitted is Proposer's responsibility.

6 Financial Model Submittal Requirements

6.1 General Financial Model Requirements

Proposers shall submit two Financial Models for the Project. One Financial Model shall assume that the IH 610 Interchange Option is exercised, and the other Financial Model shall assume that the IH 610 Interchange Option is declined. The format of the Financial Model is at the discretion of Proposers, but must comply with the requirements set out in this Section 6.

6.2 Financial Model Structure and Supporting Documents

6.2.1 Financial Model Format Requirements

Each Financial Model shall be compatible with Microsoft Excel Version 2000 for Windows 2000 or later. The file name of each Financial Model shall clearly identify the Financial Model version and shall change with each successive version of the Financial Model issued. Where additional Financial Models based on the same version are issued (i.e. where the additional Financial Model is generated by changing input cells only) the file name shall reflect that the same version is being used.

The Financial Model shall also contain as a minimum the following on a title page in a separate worksheet:

(a) Model name;

(b) Proposer's name;

(c) Model author;

(d) Version;

(e) Date (Financial Model date and run date);

(f) Key to formats (e.g. yellow for inputs);

(g) Key to sheet names (i.e. "Inputs" for input sheets, "Calculations" for calculation sheets etc.); and

(h) Whether such model assumes that the IH 610 Interchange Option is exercised or declined.

Each output sheet of each Financial Model shall identify the Financial Model version and the date of issue.

No password protection may be included in a Financial Model (including password protected macros, or hidden rows columns, cells or sheets). Each Financial Model shall be formatted to facilitate printing.

6.2.2 Financial Model Consistency

Each Financial Model shall have time periods across the columns and calculations down the rows. This shall be consistent in all sheets of such Financial Model. There are two areas where consistency is most important:

(a) Columns – a column shall be used for the same period in each of its occurrence in model worksheets; and

(b) Rows – a row shall contain only one formula, copied across all columns.

6.2.3 Financial Model Integrity

All calculations shall be coded to provide exactly what they purport to represent, i.e. no balancing figures. Use of a macro is acceptable provided it is appropriately documented in the model and the Assumptions Book.

6.2.4 Financial Model Linearity

Each Financial Model shall calculate in one pass (i.e., no circular references).

6.3 Financial Model Organization

6.3.1 Elements of Financial Model

Each Financial Model shall have three distinct elements:

(a) Inputs – which shall include data and assumptions but NO calculations;

(b) Calculations – individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculations sheets; and

(c) Outputs – no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

6.3.2 Financial Model Inputs and Specifications

Each Financial Model shall be developed with reference to the following key inputs and assumptions:

(a) **Specific Project Dates.** All milestone dates for the Project set in the RFP shall be met;

(b) **Currency.** Each Financial Model shall be in US dollars.

(c) **Periods.** Each Financial Model shall be constructed to include key financial statements and ITP-required outputs to conform to semi-annual periods from financial close until two years after the end of the Lease;

(d) **Revenues.** All demand and toll rate assumptions shall be clearly stated in each Financial Model, with supporting detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual revenue assumptions. While aggregate revenue estimates may

be used as an input within the Financial Model, a detailed breakdown, supported by any traffic and revenue studies undertaken by Proposer, shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between demand, toll rates and toll revenues;

(e) **Expenditure.** All cost assumptions shall be clearly stated in each Financial Model, with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual cost assumptions. Where aggregate costs are used as an input within a Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between costs and the price of the service to TxDOT;

(f) **Contingencies and Profit Margins.** Each Financial Model shall make clear where contingencies and profit margins have been included so that the financial evaluation can be based on an appropriate understanding of the levels of risk assumed by Proposers;

(g) **Macroeconomic Assumptions.** All macroeconomic assumptions used within each Financial Model shall be clearly stated;

(h) **Inflation.** If inflation indices other than CPI are used within the model (e.g., to inflate wages) then these shall be clearly stated as separate inputs;

(i) **U.S. GAAP.** Each Financial Model shall be compliant with U.S. GAAP;

(j) **Taxation Rates.** Each Financial Model shall use the appropriate rates for tax in force at the submission date; and

(k) **Tax Allowances.** Each Financial Model shall clearly show the assumptions regarding tax allowances being claimed.

6.3.3 Financial Model Outputs

Each Financial Model shall be provided and will include:

(a) Outputs of each Financial Model must identify the Financial Model version and the date of issue.

(b) A summary sheet which includes a sources and applications of funds statement, graphs of cover ratios, a profile of cash balances (that confirms the financial feasibility of the Project, including all required reserves as prescribed by lenders) and the Concession Payment, under the Initial Financial Model and revenue payment amount payable to TxDOT;

(c) Financial statements (cash flow, sources and uses of funds, balance sheet and profit and loss) in nominal terms for each period;

(d) A schedule outlining calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;

(e) Cash cascade in order of seniority (consistent with the CDA);

(f) Internal rate of return on pre- and post-tax equity and quasi–equity/subordinated debt in both real and nominal terms and a blended equity return, incorporating all sub–senior debt finance;

(g) Debt to equity ratio for all periods, defined as the ratio of total debt to total equity and quasi–equity;

(h) Weighted average cost of capital (the average cost of equity and debt weighted by the prevailing proportions of debt to equity for the initial design and construction) over the term of the CDA;

(i) Net present value of construction costs, O&M costs, toll collection costs, lifecycle costs, public funds and revenue payment, separately and in total, discounted to the Proposal Due Date (using 5% as the discount rate);

(j) For each annual period of each loan, show all actual and average ratios required by the Lender's term sheets, including as a minimum, the debt service cover ratio, loan life cover ratio being the net present value of future net cash flow available to service debt over the loan life including cash balances but excluding the balance of the lifecycle maintenance reserve, divided by the senior debt outstanding;

(k) For each period of each loan, show all commitment, arrangement and other required fees;

(l) Appropriate reserves as required by funder's term sheets, which may include a debt service reserve account and a maintenance reserve account. TxDOT will expect the Financial Model to incorporate the benefit of interest earned on all project company cash balances; and

(m) The impact of all claims for tax allowances made by Proposer.

6.3.4 Financial Model Functionality and Sensitivity Analysis

Each Financial Model is to provide the ability to run sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:

(a) traffic and revenue;

(b) inflation rates;

(c) interest rates;

(d) capital costs; and

(e) operating cost, maintenance cost and rehabilitation costs.

Running a sensitivity analysis shall only require change to a single model input. TxDOT anticipates that when an input variable is changed the effect will flow through the model to all relevant outputs (subject to re-optimization of the Financial Model through the use of a macro, if applicable).

6.4 Financial Model Assumptions Book

Proposers shall submit an Assumptions Book describing fully all the assumptions underlying the financial projections within each Financial Model and at a minimum include the items listed below:

(a) Dates as listed in the RFP documents;

(b) Assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs and revenue for each year;

(c) Forecast capital expenditure, presented in prices at the Proposal Due Date and classified in accordance with the construction cost categories outlined in Form O (Detailed Costing Form);

(d) Depreciation assumptions – split between the various categories of fixed asset;

(e) O&M costs, presented in prices at the Proposal Due Date analyzed in the categories outlined in Form O (Detailed Costing Form);

(f) Traffic assumptions underlying the revenue forecasts;

(g) Average actual tolls for each year of the term of the Lease; and

(h) All financing assumptions, including but not limited to drawdowns, capital repayment moratoria, repayment schedules and maturity, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).

Any third party reports developed to support the revenue and cost estimates used in developing the financial offer shall be appended to the Assumptions Books.

6.5 Financial Model Instructions Guide

Proposers shall provide details of how each Financial Model operates. Such details shall include identifying all worksheets and describing their respective functions.

The instructions shall include step by step instructions on the procedure to run and to optimize each Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions shall also explain how to print the model.

6.6 Detailed Costing Form

Proposer shall complete (i) a completed Form O for Base Scope only (without the IH 610 Interchange Work) and (ii) a completed Form O for the Initial Configuration with the IH 610 Interchange Work. Each Form O shall be included in the Financial Proposal and shall be clearly labeled to indicate whether such form includes the IH 610 Interchange Work. The units and unit costs included on Form O will be used to create the schedule of values (see Technical Provisions, Section 2.1). Mobilization costs to be included on Form O shall not exceed 10% of the sum of all Payment Activities for the Section.

6.7 Detailed Cost and Pricing Data

Proposer shall also provide the detailed back-up information regarding the basis for Proposer's cost estimates for development, operations and maintenance of the Project, meeting all requirements of this Section 6.7 (the "Cost and Pricing Data"). The Cost and Pricing Data shall be separately sealed, and shall include copies of all offers and all data and information received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Form O (Detailed Costing Form). The Cost and Pricing Data shall include supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge and fee information used by Proposer in the creation and derivation of its Proposal. Proposer shall submit its Cost and Pricing Data in hard copy and whenever possible shall also provide electronic copies. Proposer shall submit the Cost and Pricing Data in such format as is used by Proposer and its Contractors in connection with the Proposal. The Cost and Pricing Data provided with the Proposal shall be personally examined by an authorized officer of Proposer prior to delivery who shall ensure that they meet the requirements of this Section 6.7.

6.8 Inclusion of AFCs

Proposer must specifically state whether any approved AFCs are included, with reference to the AFC identification number assigned by TxDOT, and shall describe how the AFC is used and provide cross-references to other elements of the Proposal that are affected by the AFC.

6.9 Financial Model Audit

Proposer shall cause an independent audit of Proposer's Financial Model ("Financial Model Audit") to be conducted by a firm engaged by Proposer and approved by TxDOT (the "Model Auditor").

As part of the Financial Model Audit, Proposer shall also provide TxDOT with an opinion from the Model Auditor stating that the Financial Model is suitable for use in connection with the Compensation Event procedures set out in the CDA. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with U.S. GAAP. This opinion, on which TxDOT shall be a co-addressee and expressly entitled to rely, may also result from the independent review of the Financial Model required by the selected Proposer's lenders.

Copies of the Financial Model Audit report(s) and opinion(s) shall be co-addressed to TxDOT and TxDOT shall be expressly identified therein as an entity entitled to rely upon such audit. Proposer shall cause the Financial Model Audit report(s) and opinion(s) to be delivered to TxDOT with its Financial Proposal.

Prior to engaging the Model Auditor, Proposer will provide TxDOT with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion) and the level of professional liability coverage (which must cover claims by TxDOT arising from any errors or omissions by the Model Auditor in connection with the Model Audit). The engagement terms with the Model Auditor may limit the Model Auditor's liability to TxDOT for the audit opinion's failure to identify any error(s) in the financial model in an amount no less than four times the amount of the Model Auditor's total fees. The Model Auditor chosen by Proposer must be unaffiliated with Proposer and otherwise be free of any conflict of interest. With respect to any claim TxDOT may bring against the Model Auditor, the choice of law and jurisdiction provisions for the engagement with the Model Auditor must be the State of Texas. Proposer shall submit all requested information concerning the proposed Model Auditor to TxDOT for TxDOT's

approval by the applicable last date specified in Section 1.6.1. TxDOT will provide a decision on the requested Model Auditor pre-approval not later than the applicable last date specified in Section 1.6.1.

Neither party will be entitled to any adjustment to the Concession Payment or the revenue payment provisions, based on the results of the Financial Model Audit.

Pursuant to Section 4.3.5 of the CDA, Developer is required to provide an update to the Financial Model Audit within two Business Days from the after the last day of market interest rate protection under Section 3.3.4 of the CDA.

7 Concession Payment to TxDOT; Public Funds; Revenue Payment

Proposer's concession payment must be in the form of an upfront lump sum payment to TxDOT (the "**Concession Payment**"), payable to TxDOT pursuant to Section 4.1 of the CDA. The Concession Payment will be used to calculate Proposer's Price Score under ITP Section 5.2. The amount of the Concession for the Base Scope (without the IH 610 Interchange Work) shall be listed in Form K-1, Box 1. The amount of the Concession Payment for the Initial Configuration with the IH 610 Interchange Work shall be listed in Form K-2, Box 1.

Form K-1 shall be submitted to TxDOT with the Proposal in a sealed envelope, clearly labeled "[Proposer's Name] – Form K-1 for the TxDOT SH 288 Toll Lanes Project in Harris County – Price Proposal".

Form K-2 shall be submitted to TxDOT with the Proposal in a sealed envelope, clearly labeled "[Proposer's Name] – Form K-2 for the TxDOT SH 288 Toll Lanes Project in Harris County – Price Proposal".

7.1 Availability of Public Funds

TxDOT does not intend to contribute any public funds to the Project, except for (a) the TMC Public Funds Amount (as defined in, and pursuant to, Section 4.5 of the CDA) and (b) if the IH 610 Interchange Option is exercised, any IH 610 Interchange Public Funds Payments (as defined in, and pursuant to, Section 4.6 of the CDA).

In Form K-2, Box 2, each Proposer shall indicate any IH 610 Interchange Public Funds Payments required and, for each such payment, the earliest date (in the form of a certain number of months after the issuance of NTP2) on which the payment would be made by TxDOT to Developer.

7.2 Revenue Payment Calculation

Section 4.2 of the CDA requires Developer to make Revenue Payments to TxDOT based on Cumulative Toll Revenues (as defined below) during the Term.

Each Proposer is required to submit on Form S-1 a table of the floors and bands for each date as of which the Revenue Payments will be calculated for the Base Scope only (without the IH 610 Interchange Work). If the IH 610 Interchange Option is declined, Form S-1 will be updated for inclusion in the executed CDA to reflect Developer's Base Case Financial Model. Form S-1 shall be submitted to TxDOT with the Proposal in a sealed envelope, clearly labeled "[Proposer's Name] – Form S-1 for the TxDOT SH 288 Toll Lanes Project in Harris County – Revenue Payment Calculation".

Each Proposer is required to submit on Form S-2 a table of the floors and bands for each date as of which the Revenue Payments will be calculated for the Initial Configuration with the IH 610 Interchange Work. If the IH 610 Interchange Option is exercised, Form S-2 will be updated for inclusion in the executed CDA to reflect Developer's Base Case Financial Model. Form S-2 shall be submitted to TxDOT with the Proposal in a sealed envelope, clearly labeled "[Proposer's Name] – Form S-2 for the TxDOT SH 288 Toll Lanes Project in Harris County – Revenue Payment Calculation".

As indicated in Section 4.2 of the CDA, the Revenue Payment will be calculated as of (i) December 31 of the year in which the third anniversary of the first Service Commencement Date occurs, (ii) December 31 of each subsequent year during the Term and (iii) the last day of the Term. The floors and bands for each calculation date should be calculated as follows:

(a) The floor for Band 1 is $0. The ceiling for Band 1 is the amount of Cumulative Toll Revenue during the Term to date for which the Proposer's IRR would equal its Base Case IRR.

(b) The floor for Band 2 is the ceiling for Band 1 plus $1. The ceiling for Band 2 is the amount of Cumulative Toll Revenue during the Term to date for which the Proposer's IRR would equal its Base Case IRR + 3%.

(c) The floor for Band 3 is the ceiling for Band 2 plus $1. The ceiling for Band 3 is the amount of Cumulative Toll Revenue during the Term to date for which the Proposer's IRR would equal its Base Case IRR + 6%.

(d) The floor for Band 4 is the ceiling for Band 3 plus $1. The ceiling for Band 4 is the amount of Cumulative Toll Revenue during the Term to date for which the Proposer's IRR would equal its Base Case IRR + 8%.

(e) The floor for Band 5 is the ceiling for Band 4 plus $1.

"Cumulative Toll Revenues" means the level of gross toll revenues received to date which is representative of a blended, nominal, after-tax internal rate of return over the full Term (excluding potential extensions of the Term) of X% for equity, as calculated in Proposer's Initial Financial Model.

To the extent the different return percentages driving the ceiling revenues per the above definition are not equal to the Proposer's blended, nominal, after-tax equity internal rate of return, the Proposer shall multiply its base case revenues by a constant coefficient, and hold all other variables constant except for dividends, to target the relevant return level per the above table. As a clarification, any such increase in revenue should not lead to an increase in taxes, revenue collection costs or any other cost variable.

TxDOT will, as part of its evaluation, check that the toll revenue amounts Proposers provide in Form S-1 and Form S-2 generate the appropriate return levels as per the above table.

8 Verification

Each Proposer shall satisfy itself as to the revenues, costs and tax consequences of entering into a CDA and becoming a Developer. TxDOT makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, costs or the consequences of federal or state income tax treatment of Developer under the CDA.

EXHIBIT D

REQUIRED FORMS

See Attached

EXHIBIT E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal
Proposers shall follow the order of the Technical Checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.

Proposal Component	Form (if any)	ITP Section Cross-Reference	Count Towards Page Limit?
A. Executive Summary			
Executive Summary **(Exclude price information)**	No forms are provided	Exhibit B, Section 3.1	No
B. Proposer Information, Certifications & Documents			
Proposal Letter	Form A	Exhibit B, Section 3.2.1	No
Authorization Documents	No forms are provided	Exhibit B, Section 3.2.1	No
Identification of Proposer and Equity Members	Form B-1	Exhibit B, Section 3.2.2	No
Information About Proposer Organization	Form B-2	Exhibit B, Section 3.2.2	No
Information About Major Participants, Major Professional Services Firms and Identified Subcontractors	Form B-3	Exhibit B, Section 3.2.2	No
Key Contractors	Form B-4	Exhibit B, Section 3.2.2	No
Responsible Proposer Questionnaire	Form C	Exhibit B, Section 3.2.3	No
Industrial Safety Record for Team Members Performing Installation or Construction Work	Form D	Exhibit B, Section 3.2.4	No
Personnel Work Assignment Form	Form E	Exhibit B, Section 3.2.5	No
Key Personnel statement of availability	No forms are provided	Exhibit B, Section 3.2.5	No

Proposal Component	Form (if any)	ITP Section Cross-Reference	Count Towards Page Limit?
Letters Approving Key Personnel	No forms are provided	Exhibit B, Section 3.2.6	No
Letters Approving Changes in Proposer's Organization	No forms are provided	Exhibit B, Section 3.2.6	No
Non-Collusion Affidavit	Form F	Exhibit B, Section 3.2.7	No
Buy America Certification	Form G	Exhibit B, Section 3.2.8	No
DBE Certification	Form H	Exhibit B, Section 3.2.9	No
Child Support Statement for State Grants, Loans and Contracts	Form I	Exhibit B, Section 3.2.10	No
Conflict of Interest Disclosure Statement	Form J	Exhibit B, Section 3.2.11	No
Completion Deadlines Form	Form N	Section 5.3.1(e)	
Equal Opportunity Employment Certification	Form Q	Exhibit B, Section 3.2.12	No
C. Project Development Plan			
General Project Management	No forms are provided	Exhibit B, Section 4.1	Yes
Design-Build Management and Technical Solutions	No forms are provided	Exhibit B, Section 4.2	Yes
Operations and Maintenance Management and Technical Solutions	No forms are provided	Exhibit B, Section 4.3	Yes
D. Appendices			
Key Personnel Resumes and References	No forms are provided	Exhibit B, Section 3.2.5.2	No
Proposer's Schematic	No forms are provided	Exhibit B, Section 4.2.2	No
Preliminary Project Baseline Schedule	No forms are provided	Exhibit B, Section 4.1.2	No

Proposal Component	Form (if any)	ITP Section Cross-Reference	Count Towards Page Limit?
E. Proposal Security (Proposal will include either a Proposal Bond or Letter of Credit in a form listed below)			
Proposal Bond	Form L-1	Exhibit B, Section 3.3.1	No
Letter of Credit (Proposal)	Form L-2	Exhibit B, Section 3.3.2	No

Financial Proposal
Proposers shall follow the order of the Financial Checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.

	Proposal No:	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
A	**Updated financial information** Proposer must provide the corporate and financial information identified in Section 4 of Exhibit C, for Proposer and Equity Participants	N/A	N/A
A1	Audited financial statements for all periods subsequent to QS and unaudited interim financial statements (Exhibit C, Section 4)		
A2	Newly formed entity financial information (as required) (Exhibit C, Section 4)		
A3	Guarantor letters of support (as required) (Exhibit C, Section 4)		
A4	For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the PQSs (Exhibit C, Section 4)		
A5	Credit Ratings (Exhibit C, Section 4)		
A6	Letter regarding material change in financial condition since submission of the QS and for next reporting period (Exhibit C, Section 4)		
A7	Letter disclosing all material off balance sheet liabilities (Exhibit C, Section 4)		
B	**Financing Plan** (Exhibit C, Section 5)	N/A	N/A
B2	Range of Financing Sources (Exhibit C, Section 5.1)		
B3	Details for Lenders and Lender Support Letters (Exhibit C, Section 5.2)		

	Proposal No:	Location of information within submission documentation	
B4	Details of Equity Source and letters from Equity Members (Exhibit C, Section 5.3)		
B5	Financial Advisor letter (Exhibit C, Section 5.4)		
B6	Schedule for Commercial and Financial Close (Exhibit C, Section 5.5)		
B7	Financial Summary for the Base Scope (Form R-1) (Exhibit C, Section 5.6)		
B8	Financial Summary for the Initial Configuration with the IH 610 Interchange Work (Form R-2) (Exhibit C, Section 5.6)		
C	**Feasibility of Financing Plan** (Exhibit C, Section 5.7)	N/A	N/A
D	**Financial Model** (Exhibit C, Section 6.1)	N/A	N/A
D1	Financial Model outputs (Exhibit C, Section 6.3.3)		
D2	Financial Model Assumptions Book (Exhibit C, Section 6.4)		
D3	Instructions on operations of the Financial Model (Exhibit C, Section 6.5)		
D4	Detailed Costing Form for Base Scope (Form O) (Exhibit C, Section 6.6)		
D5	Detailed Costing Form for Initial Configuration with the IH 610 Interchange Work (Form O) (Exhibit C, Section 6.6)		
D6	Cost and Pricing Data (separately sealed) (Exhibit C, Section 6.7)		
D7	Inclusion of AFCs (Exhibit C, Section 6.8)		
D8	Financial Model Audit report(s) and opinion(s) (Exhibit C, Section 6.9)		

	Proposal No:	Location of information within submission documentation	
E	**Price Proposal** (Exhibit C, Section 7)		
E1	Price Proposal for Base Scope (Form K-1) (Exhibit C, Section 7)		
E2	Price Proposal for Initial Configuration with the IH 610 Interchange Work (Form K-2) (Exhibit C, Section 7)		
E3	Allocation of Revenue Payment for Federal Income Tax (Form K-3)		
F	**Revenue Payment Calculation**		
F1	Revenue Payment Calculation for Base Scope (Form S-1) (Exhibit C, Section 7.2)		
F2	Revenue Payment Calculation for Initial Configuration with the IH 610 Interchange Work (Form S-2) (Exhibit C, Section 7.2)		
G	**Termination for Convenience Fee Amounts** (Form P) (Exhibit C, Section 3)		

EXHIBIT F

RIGHT OF ENTRY PROCESS

Proposers must comply with the following steps in order to obtain a right of entry from TxDOT to the _____ Right of Way at various locations prior to execution of the CDA.

1. Proposer shall complete the Agreement for Engineering Investigations on State Highway Right of Way and forward a signed original agreement and Exhibit B, TxDOT Form 1560, Certificate of Insurance, to _____, with a copy to _____.

2. Exhibit A, CDA Site Investigation on Highway Right of Way in the Houston District, shall be completed by Proposer for each request for right of entry upon State highway Right of Way. One Exhibit A can cover a request for multiple days of access. Exhibit A may be turned in with the signed original Agreement for Engineering Investigations on State Highway Right of Way and Exhibit B, or may be turned in subsequent to Proposer's receipt of the fully executed copy of the agreement.

3. Dependant upon the location of the Right of Way for which Proposer seeks entry, Proposer shall submit Exhibit A to each of the following persons:

   a) _____; and

   b) All listed contacts on the attached Contact List.

4. Prior to a Proposer's entry onto State Highway Right of Way, Proposer must receive Approval from the Houston District office.

5. Proposer may perform investigations in areas only as requested in each Exhibit A.

*** Note: Exhibit A may be faxed, e-mailed or submitted in hard copy. Approval of Exhibit A shall occur in written format which may include e-mail.

*** Exhibit A preparation:
In addition to location and general description of investigations to be performed, if the investigations require closure of a lane(s) of traffic for any reason, Proposer shall submit a traffic control plan for TxDOT review and approval with the appropriate Exhibit A.

Contact List:

AGREEMENT FOR
ENGINEERING INVESTIGATIONS
ON STATE HIGHWAY RIGHT OF WAY

STATE OF TEXAS §

COUNTY OF HARRIS §

THIS AGREEMENT made this _____ day of _____ by the State of Texas, acting by and through the Texas Department of Transportation, referred to as "TxDOT," party of the first part, and _____, hereinafter referred to as the "Requestor," party of the second part.

WITNESSETH

WHEREAS, TxDOT owns and operates a system of highways for public use and benefit, including _____, in Harris County; and

WHEREAS, the Requestor has requested permission from TxDOT to use _____ Right of Way at various locations to be determined based on submittal of Exhibit A for each instance of access requested. Exhibit A is attached hereto and made a part of this Agreement, for the purpose of asset assessment, engineering studies and site investigations; and

WHEREAS, in accordance with Tex. Adm. Code, § 27, TxDOT seeks to enter into a Comprehensive Development Agreement with a private sector partner and desires the private sector partner to have access to the proposed Project limits for performance of due diligence work in preparation of its Proposal; and

WHEREAS, this Agreement is intended to encourage and facilitate access to TxDOT highway facilities and their adjacent Right of Way for the promotion of that goal while protecting the safety of the traveling public and the integrity of state highway facilities and Right of Way.

AGREEMENT

1. The Requestor's description of the activities, including the placement of people and equipment on TxDOT highway Right of Way, will be submitted in writing as outlined in Exhibit A and shall be made part of this Agreement upon approval of TxDOT.

2. It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title, or easement in or upon its Right of Way. Furthermore, approval of this Agreement by TxDOT does not constitute approval by any other Texas State agency.

3. The Requestor agrees to accept full responsibility for coordinating and making arrangements with the local law enforcement personnel to provide adequate and safe traffic control during the above referenced activity. If, during the activity, the local law enforcement personnel determine that the above referenced use of the Right of Way is creating a traffic hazard, the Right of Way will be opened to traffic and the activity will be rescheduled to a time agreeable to TxDOT, the Requestor, and the local law enforcement personnel.

4. The Requestor shall provide necessary safeguards to protect the public during the above referenced activity, including adequate insurance for payment of any damages which

might result from activities during occupation of the Right of Way, and shall save TxDOT and the State of Texas harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so.

5. The Requestor agrees to indemnify and save harmless TxDOT and the State of Texas and its officers, agents, contractors, and employees from all suits, actions, or claims and from all liability and damages for any and all injuries or damages sustained by any person or property as a consequence of any neglect in the performance of the above referenced activity and any related activity by the Requestor and from any claims or amounts arising or recovered under the "Workers' Compensation Laws"; V.T.C.S., Civil Practice &Remedies Code 101.021, 101.051; or any other laws.

6. The Requestor shall further indemnify TxDOT and the State of Texas and accept responsibility for all damages or injury to property of any character occurring during the prosecution of the activity resulting from any act, omission, neglect or misconduct on the part of the Requestor in the manner or method of executing the activity. The Requestor assumes all costs associated with the inspections, investigations and assessments.

7. TxDOT, having the legal right to occupy TxDOT highway Right of Way, will not be responsible or liable for damages to the Requestor's property or operations. The Requestor's attention is directed to the fact that utility installations owned by others exist in the Right of Way. The Requestor shall save harmless TxDOT and the State of Texas from any and all suits or claims resulting from damage to any utility installation due to the above referenced activity.

8. The Requestor shall restore the Right of Way to its original condition, free of any damage to the roadway and drainage structures, signs, and pavement and, to the extent practicable, restore the natural environment, including landscape features. The Requestor will avoid or minimize damage outside the Right of Way and will, at its own expense, restore or repair damage outside the Right of Way. The Requestor's performance shall be in compliance with all federal, State and local laws, ordinances, and regulations including:

   (a) the Endangered Species Act of 1973, 16 USC § 1531 et seq. and the regulations there under as amended;

   (b) TxDOT's erosion and sedimentation control standards and TxDOT's Vegetation Management Standards, which may in any way regulate or control the activity;

   (c) all State and federal environmental laws and any conditions required by TxDOT to protect the environment.

   (d) Any costs incurred by TxDOT for repairs to highway facilities, for the removal of debris, or for any other necessary restoration work performed by TxDOT as a result of the activity will be billed to the Requestor at cost. The Requestor shall make full and complete payment to TxDOT within thirty (30) days from receipt of TxDOT's written notification.

9. Any action by the Requestor that indicates a commencing of the activity in the Right of Way will signify that the Requestor agrees to abide by the above requirements.

10. Any changes in the time frame, character, or responsibilities of the parties as outlined on the appropriate previously approved Exhibit A shall be enacted by a written approval by TxDOT.

11. It is mutually agreed and understood that if the above referenced section of paved Right of Way is to be partially or totally temporarily closed, it will be closed in accordance with a "Traffic Control Plan" provided as part of the appropriate Exhibit A and subject to approval by TxDOT. The Requestor hereby agrees to immediately reopen any partially or totally closed section of Right of Way to emergency vehicles, law enforcement personnel, or others in case of emergency. The traffic control shall be provided by the Requester through cooperation with the appropriate law enforcement personnel at no cost to TxDOT. Each Traffic Control Plan shall be provided by the Requestor, at no cost to TxDOT, and approved by TxDOT, and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, latest edition. The Requestor hereby agrees to accept full responsibility for the complete planning, design and implementation of each Traffic Control Plan. Each Traffic Control Plan shall include a traffic enforcement plan, including a letter by mail or facsimile from the law enforcement agency that will be providing the traffic control for the event or a contact name and telephone number of the responsible law enforcement agency. Law enforcement will be present at all times during a closure unless stated otherwise in the Traffic Control Plan.

12. The Requestor has provided TxDOT with Exhibit B, covering the below listed insurance limits for the duration of the activity. Exhibit B is attached hereto and made a part of this Agreement.

    (a) Worker's Compensation Insurance Amount – Statutory Endorsed with a Waiver of Subrogation in favor of TxDOT and the State of Texas.

    (b) Comprehensive General Liability Insurance

Amounts	Bodily Injury . . . $500,000 each occurrence
	Property Damage . . .$100,000 each occurrence

    OR

    Commercial General Liability Insurance

Amount	$600,000 combined single limit each occurrence and in the aggregate which includes Contractual Coverage; and, endorsed with a Waiver of Subrogation in favor of those parties named in paragraph A above, and endorsed with TxDOT and the State of Texas as an additional insured.

    (c) Comprehensive Automobile Liability

Amounts	Bodily Injury . . . $250,000 each person, $500,000 each occurrence
	Property Damage . . .$100,000 each occurrence

Endorsed with a Waiver of Subrogation in favor of those parties named in paragraph A above, and endorsed with TxDOT and the State of Texas as an additional insured.

13. This Agreement shall terminate upon execution of a Comprehensive Development Agreement, unless terminated by:

    (a) Mutual agreement and written consent of both parties,

    (b) TxDOT upon written notice to the Requestor as consequence of the Requestor's failure to perform the responsibilities set forth herein (TxDOT may grant allowances for circumstances beyond the control of the Requestor),

    (c) TxDOT for reasons of its own and not subject to mutual consent of the Requestor upon not less that 15 days' written notice to the Requestor, or

    (d) By satisfactory completion of the Requestor's temporary use of the highway Right of Way.

    The termination of this agreement and payment of any amount in settlement as prescribed herein shall extinguish all rights, duties, and obligations of TxDOT and the Requestor. Upon termination of this Agreement, the Requestor shall vacate the highway Right of Way and restore it to the original condition in a manner described herein within two days from the termination date of this Agreement.

14. Should disputes arise between the parties regarding the obligations and responsibilities established herein, TxDOT's decision shall be final and binding.

15. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. This Agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings and/or written or oral agreements between TxDOT and the Requestor respecting the within subject matter.

17. The undersigned for the Requestor represents and warrants that he or she is an officer of the Requestor for which he or she has executed this Agreement and that he or she has the full and complete authority to enter into this Agreement on behalf of the Requestor.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed on the dates shown below stated.

REQUESTOR NAME:

_____

By:_____ (Signature)

Name:_____
(Typed)

_____
(Title)

Date:_____

Address:_____
_____
_____
_____

Phone:_____

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs hereto fore approved and authorized by the Texas Transportation Commission

By:_____
District Engineer

_____
District

Date:_____

LIST OF ATTACHED EXHIBITS

Exhibit	Description
A	CDA Site Investigation on Highway Right of Way in the Houston District
B	TxDOT Form 1560, Certificate of Insurance

EXHIBIT A

CDA SITE INVESTIGATION ON
HIGHWAY RIGHT OF WAY
IN THE HOUSTON DISTRICT

_____ is giving written notice of proposed Work to take place within the right of way of _____ in Harris County, TX as follows:

(Give general written description of location and work to take place-Do not write "See Attached")

The Work listed above **is not to include the following**: The destructive testing of any in place pavement or structure, or other work that may be considered harmful to assets already in place. This Work is limited to Site investigations and Engineering Studies for the purposes of preparing a Proposal for the TxDOT SH 288 Toll Lanes in Harris County Project. This may include reviewing in place Work along the Project Right of Way, gathering pavement condition score information, subsurface soils investigations and other investigations as required in preparation of a Proposal in response to the TxDOT issued RFP.

At no time shall any Work activity that involves digging take place any closer than three feet from the edge of pavement or back of curb.

The Requestor will use best management practices to minimize erosion and sedimentation resulting from the proposed Work, and will revegetate the Work area as indicated under "Revegetation Special Provisions."

The Requestor will ensure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained for the duration of this Work. (Approval of traffic control plans is required by area/maintenance office.)

Refer to attached location map and drawing for a more specific location and a description of the Work activity. The undersigned agrees to comply with the terms and conditions set forth in this notice.

The proposed Work will begin on the ___ day of _____, 20 ____.

Requested Party_____

By (Print)_____

Signature _____

Address _____

_____

Phone _____

Texas Department of Transportation

_____
Area Engineer or Maintenance Supervisor

Signature: _____

_____
Date

COPY OF THIS DOCUMENT MUST BE KEPT ON JOBSITE
If Approved via e-mail, retain printed copy of e-mail approval on jobsite as well.

TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)
CERTIFICATE OF INSURANCE

Prior to the beginning of work, the Contractor shall obtain the minimum Insurance and endorsements specified. Only the TxDOT certificate of insurance form is acceptable as proof of insurance for department contracts. Agents should complete the form providing all requested information then either fax or mail this form directly to the address listed on the back (of this form. Copies of endorsements listed below are not required as attachments to this certificate.

Insured: _____

Street/Mailing Address: _____

City/State/Zip: _____

Phone Number: Area Code (___)___

WORKERS' COMPENSATION INSURANCE COVERAGE:

Carrier Name:			**Carrier Phone #:**	
Address:			**City, State, Zip:**	
Type of Insurance	**Policy Number**	**Effective Date**	**Expiration Date**	**Limits of Liability:**
Workers' Compensation				Not Less Than: Statutory — Texas

COMPREHENSIVE GENERAL LIABILITY INSURANCE:

Endorsed with TxDOT as Additional insured and with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			**Carrier Phone #:**	
Address:			**City, State, Zip:**	
Type of Insurance:	**Policy Number:**	**Effective Date:**	**Expiration Date**	**Limits of Liability:**
Comprehensive General Liability Insurance Bodily injury Property Damage ***OR*** Commercial General Liability Insurance				Not Less Than: $ 500,000 each occurrence $ 100,000 each occurrence $ 100,000 for aggregate ***OR*** $ 600,000 combined single limit

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE:

Endorsed with TxDOT as Additional Insured and with a Waiver of Subrogation In favor of TxDOT.

Carrier Name:			**Carrier Phone #:**	
Address:			**City, State, Zip:**	
Type of Insurance:	**Policy Number:**	**Effective Date:**	**Expiration Date**	**Limits of Liability:**
Comprehensive Automobile Liability Insurance *OR* Texas Business Automobile Policy Bodily injury Property Damage				Not Less Than: $ 250,000 each person $ 500,000 each occurrence $ 100,000 each occurrence

UMBRELLA POLICY (If applicable):

Carrier Name:			**Carrier Phone #:**	
Address:			**City, State, Zip:**	
Type of Insurance:	**Policy Number:**	**Effective Date:**	**Expiration Date**	**Limits of Liability:**
Umbrella Policy				

Agency Name **Address** **City, State Zip Code**

_____

Area Code (___)_____ _____ _____

Authorized Agent's Phone Number **Authorized Agent Original Signature** **Date**

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the named insurance company. Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the agent or the insurance company has sent written notice by certified mall to the contractor and the Texas Department of Transportation,

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named meet all the requirements stipulated and such policies are in full force and effect. *If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as* a *duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.*

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Texas Department of Transportation

NOTES TO AGENTS:

Agents must provide all requested information then either fax or mall this form directly to the address listed below.

Pre-printed limits are the minimum required, if higher limits are provided by the policy, enter the higher limit amount and strike-through or cross-out the pre-printed limit.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day prior** to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, Is adequate for subsequent department contracts provided adequate coverage Is still in effect. Do not refer to specific projects/contracts on this form.

The TxDOT certificate of insurance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing business as) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate In any manner.

This form may be reproduced.

The SIGNATURE of the agent is required. Stamped/typed/printed signatures are not acceptable.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURANCE is not an acceptable substitute for Workers' Compensation.

COMPREHENSIVE GENERAL LIABILITY INSURANCE or **COMMERCIAL GENERAL LIABILITY INSURANCE:**

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	$500,000 each occurrence
Property Damage	$100,000 each occurrence
	$100,000 for aggregate

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE or **TEXAS BUSINESS AUTOMOBILE POLICY:**

The coverage amount for a Texas Business Automobile Policy or Comprehensive Automobile Liability may be shown as a minimum of $600,000 Combined Single Limit by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for Comprehensive Automobile Liability Insurance or Texas Business Automobile Policy.

MAIL ALL CERTIFICATES TO:

Texas Department of Transportation
CST — Contract Processing Unit (RA/200 - 1st Fl.)
125 E. 11th Street
Austin, TX 78701-2483
512/416-2429 (V), 512/416-2536 (F)

EXHIBIT G

FORM OF PAYMENT FOR WORK PRODUCT AGREEMENT

PAYMENT FOR WORK PRODUCT AGREEMENT
(TxDOT SH 288 Toll Lanes Project in Harris County)

THIS PAYMENT FOR WORK PRODUCT AGREEMENT is made and entered into as of this _____ day of 201_, by and between the Texas Department of Transportation ("TxDOT") and _____, a _____ duly authorized to conduct business in the State of Texas ("Proposer"), with reference to the following facts:

A. Proposer is one of the shortlisted proposers eligible to submit Proposals for the TxDOT SH 288 Toll Lanes Project in Harris County (the "Project"), and wishes to submit a Proposal in response to the Request for Proposals for the Project issued by TxDOT on _____ (as amended, the "RFP"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

B. The RFP requires each shortlisted proposer to execute and deliver a Payment for Work Product Agreement to TxDOT with the Proposal by the date specified in the RFP, as a condition to the proposer's eligibility to receive a payment for work product in accordance with Section 6.3 of the Instructions to Proposers ("ITP").

NOW, THEREFORE, the Proposer hereby agrees as follows:

1 SERVICES AND PERFORMANCE

(a) The Proposer shall prepare a responsive Proposal in response to the RFP. A "responsive" Proposal means a Proposal submitted by a shortlisted proposer which conforms in all material respects to the requirements of the RFP, as determined by TxDOT, in its sole discretion, and is timely received by TxDOT.

(b) Subject to the provisions of the RFP Documents, all work performed by Proposer and its team members pursuant to this Payment for Work Product Agreement and in connection with the Proposal shall be considered work for hire, and the products of such work shall become the property of TxDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Payment for Work Product Agreement.

2 TERM

Unless otherwise provided herein, the provisions of this Payment for Work Product Agreement shall remain in full force and effect until the earlier to occur of (a) 18 months from the date of the execution of this Agreement or (b) the date payment is delivered hereunder. The work product is due no later than the Proposal Due Date.

3 COMPENSATION AND PAYMENT

(a) If, following receipt of Proposals as requested by the RFP, the Comprehensive Development Agreement (the "CDA") is awarded by TxDOT to a proposer other than the Proposer or the procurement is cancelled, then, subject to the terms of Section 6.3 of the ITP and this Payment for Work Product Agreement (including, without limitation, Proposer's full compliance therewith), TxDOT agrees to pay Proposer for the herein described services a lump sum in an amount equal to the lesser of (i) the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by

TxDOT in the performance of its functions and (ii) $950,000. Proposer will not be compensated if the Proposal, including, without limitation, the Financial Proposal, is determined by TxDOT to be non-responsive, and/or fails to achieve a passing score on any of the pass/fail criteria in Section 5.3 of the ITP, or if TxDOT withdraws the RFP prior to the due date for Proposals.

(b) In no event shall any proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 of the ITP be entitled to receive compensation hereunder, including, without limitation, payments under Section 3(a). In addition, if TxDOT awards the Agreement to Proposer, Proposer will not be entitled to compensation hereunder, including, without limitation, payments under Section 3(a).

(c) Payment will be made within 30 days after receipt of a proper invoice submitted to TxDOT under this Section 3(c). The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the CDA, is posted on the Project Website, or, if final award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best value Proposer and TxDOT), as applicable. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment.

(d) This Payment for Work Product Agreement involves the submission of a Proposal by Proposer that must be received by the due date(s) set forth in the RFP and determined responsive by TxDOT as a condition of Proposer's eligibility for the payment set forth in Section 3(a).

4 INDEMNITIES AND SURETYSHIP

(a) Proposer agrees that it will indemnify, defend, and hold harmless TxDOT and all of TxDOT's commission members, officers, agents, representatives and employees from any claim, loss, damage, cost, judgment, fee, penalty, charge or expenses (including attorneys' fees and costs) arising out of any acts, actions, neglect, omissions, fault, willful misconduct, violation of law or breach by Proposer, its agents, employees or Subcontractors during the performance of this Payment for Work Product Agreement, whether direct or indirect, and whether to any person or property to which TxDOT or said parties may be subject, except that neither Proposer nor any of its Subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of TxDOT or any of its commission members, officers, agents, or employees.

(b) Proposer's obligation to indemnify, defend and pay for the defense or, at TxDOT's option, to participate and associate with TxDOT in defense of any claim and any related settlement negotiations, shall be triggered by TxDOT's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding TxDOT solely negligent shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by TxDOT. TxDOT's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.

5 COMPLIANCE WITH LAWS

(a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT during this procurement process are, upon their receipt by TxDOT, the property of TxDOT and are subject to the Public Information Act (Texas Government Code Section 552.001 *et seq.*).

(b) Proposer shall comply with all federal, state and local laws, ordinances, rules and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under this Payment for Work Product Agreement.

(c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules and regulations as they relate to work performed under this Payment for Work Product Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Payment for Work Product Agreement.

6 EARLY TERMINATION

This Payment for Work Product Agreement may be terminated by TxDOT, in its sole discretion, in whole or in part, at any time. No payment will be owing by TxDOT in the event of any such termination, except as provided in Section 3(a) above.

7 ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Payment for Work Product Agreement without TxDOT's prior written consent, in its sole discretion. Any assignment of this Payment for Work Product Agreement without such consent shall be null and void and may, in TxDOT's sole discretion, disqualify Proposer from further consideration for the procurement and Project.

8 MISCELLANEOUS

(a) Proposer and TxDOT agree that Proposer, its equity owners, team members and their respective employees are not agents or representatives of TxDOT as a result of this Payment for Work Product Agreement.

(b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(c) This Payment for Work Product Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions or obligations other than those contained herein or in the RFP, and this Payment for Work Product Agreement shall supersede all previous communications, representation or agreements, either verbal or written, between the parties hereto.

(d) It is understood and agreed by the parties hereto that if any part, term or provision of this Payment for Work Product Agreement is by the courts held to be illegal or in conflict with any law of the State of Texas, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Payment for Work Product Agreement did not contain the particular part, term, or provisions to be invalid.

(e) This Payment for Work Product Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue for any proceeding relating to this Payment for Work Product Agreement shall be the courts in Travis County, Texas.

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

IN WITNESS WHEREOF, this Payment for Work Product Agreement has been executed and delivered as of the day and year first above written.

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

_____[insert Proposer's name]

By: _____
Name: _____
Title: _____

EXHIBIT H-1

INDEPENDENT ENGINEER SERVICES
SUPPLEMENTAL AGREEMENT TO CONTRACT
FOR ENGINEERING SERVICES AND
AGREEMENT FOR INDEPENDENT ENGINEERING SERVICES
FOR TXDOT SH 288 TOLL LANES PROJECT IN HARRIS COUNTY

THIS SUPPLEMENTAL AGREEMENT TO CONTRACT FOR ENGINEERING SERVICES and AGREEMENT FOR INDEPENDENT ENGINEERING SERVICES FOR TXDOT SH 288 TOLL LANES PROJECT IN HARRIS COUNTY ("Agreement") is made on this ____ day of _____, 201_, by and among the State of Texas acting by and through the Texas Department of Transportation ("TxDOT"), _____, a _____ ("Developer"), and _____, a _____ ("Independent Engineer") (together with TxDOT and Developer, each a "Party" and collectively the "Parties"), for the purpose of contracting for independent engineering services.

WHEREAS, TxDOT and Developer have entered into a Comprehensive Development Agreement dated _____, 2014 (as amended from time to time, the "CDA") for the TxDOT SH 288 Toll Lanes Project in Harris County (the "Project");

WHEREAS, TxDOT and the Independent Engineer have previously entered into an indefinite delivery/indefinite quantity contract ("Master Agreement") obligating the Independent Engineer to provide certain project-specific services as described therein;

WHEREAS, TxDOT and Developer desire to contract for engineering services generally described as independent engineering services for the Project, consistent with the Master Agreement and as contemplated by the CDA and Master Agreement;

WHEREAS, Developer is not a party to the Master Agreement and is therefore not subject to the terms of the Master Agreement except to the extent expressly set forth herein, but the terms of the Master Agreement continue to apply as between TxDOT and the Independent Engineer, except as specifically modified herein, without affecting the rights of Developer under this Agreement against TxDOT or the Independent Engineer;

WHEREAS, this Agreement serves multiple purposes in that it (1) establishes among the Parties the detailed terms for providing the project-specific Independent Engineer services for the Project, (2) establishes the payment responsibilities of TxDOT and Developer for the Independent Engineer's services as contemplated by the CDA, and (3) serves as a supplemental agreement to the Master Agreement between the Independent Engineer and TxDOT; and

WHEREAS, all of the services provided by the Independent Engineer pursuant to this Agreement are professional services involving advice, judgment or opinion.

NOW, THEREFORE, TxDOT, Developer and the Independent Engineer, in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows.

AGREEMENT

ARTICLE 1. DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

1.1 Definitions and Contract Language

1.1.1. Definitions for the capitalized terms used but not otherwise defined in this Agreement are contained in Exhibit 1 to the CDA.

1.1.2. The text in parentheticals after citations to CDA Documents is for reference use only.

1.1.3. This Agreement constitutes the Independent Engineer Agreement referred to in the CDA, and the Independent Engineer shall serve as the Independent Engineer under the CDA.

1.1.4. In this Agreement, the term "Audit" means a review of Developer's processes and procedures to perform required work or review of Submittals, for the purpose of assessing and reporting on Developer's compliance with the CDA Documents and the Project Management Plan.

1.2 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:

1. supplemental agreements and addenda to this Agreement;

2. this Agreement;

3. the CDA Documents listed in Section 1.2 of the CDA, in the order of precedence specified in the CDA, to the extent that CDA provisions are referenced and incorporated into this Agreement;

4. with respect to the relationship between the Independent Engineer and TxDOT, the Master Agreement; and

5. Work Authorizations.

Notwithstanding any of the foregoing to the contrary, to the extent this Agreement and any supplemental agreements or addenda to this Agreement, or the IE QAP (as defined below in Section 2.1.1.1) or any Work Authorizations (as defined below in Section 2.1.1), may be inconsistent with or contrary to the CDA Documents as they relate to involvement of the Independent Engineer, the CDA Documents shall control and the parties agree that this Agreement shall be interpreted to conform in all respects to the provisions of the CDA. In order to implement the foregoing, the Parties agree to amend this Agreement or any supplemental agreements, or addendum to this Agreement, or the IE QAP or any Work Authorization as appropriate to resolve any such inconsistency and conform to the CDA.

If any changes to the CDA occur that materially affect the rights or responsibilities of the Independent Engineer under this Agreement, TxDOT or Developer shall provide notice of the change to the Independent Engineer. The Independent Engineer shall not be responsible for implementing those changes under this Agreement until it has received such notice.

1.3 No Effect on CDA

Nothing in this Agreement amends or modifies any of Developer's and TxDOT's obligations to each other under the CDA Documents.

1.4 Independence of the Independent Engineer

The Independent Engineer shall act as an independent professional and not as a representative of either TxDOT or Developer in the performance of its duties under this Agreement. Any certification, decision or exercise of discretion by the Independent Engineer in the performance of its duties under this Agreement shall be applied fairly to TxDOT and Developer. The Parties acknowledge that the Independent Engineer's duties under the Master Agreement include the obligation to perform certain other services as TxDOT's representative, and that those duties of the Independent Engineer are not considered to be performed hereunder.

1.5 Standards

The Independent Engineer shall perform all services under this Agreement in accordance with applicable rules and regulations of the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers. The Independent Engineer shall also perform its services hereunder in accordance with Good Industry Practice, to the extent not in conflict with documents described in Section 1.2 above, the Texas Engineering Practices Act and the rules of the Texas Board of Professional Engineers.

ARTICLE 2. SCOPE OF SERVICES

2.1 General Scope

2.1.1. The Independent Engineer shall provide all personnel, equipment, material and resources to perform services hereunder in accordance with the detailed Work Authorizations issued jointly by TxDOT and Developer from time to time in accordance with the terms of this Agreement ("Work Authorizations"). Except where TxDOT's or Developer's unilateral issuance of a Work Authorization is otherwise expressly permitted under Section 4.1.3, below, the Independent Engineer shall not proceed under a Work Authorization unless it has been signed by the Authorized Representatives of both TxDOT and Developer. Work Authorizations issued under this Agreement shall (a) be consistent with the form attached as Attachment D to the Master Agreement, (b) include the contents required by Article 1, Section B of Attachment A to the Master Agreement, (c) include a Work Authorization Budget that meets the requirements set forth in Article 1, Section C of Attachment A to the Master Agreement, and (d) provide for compensation in accordance with the Fee Schedule attached to the Master Agreement as Attachment E, which Fee Schedule is also set forth in Exhibit 1.

2.1.1.1 The initial Work Authorization under this Agreement, when issued, shall include the scope of work set forth in Exhibit 2, and will authorize and direct the Independent Engineer to submit to Developer and TxDOT for review and approval a comprehensive Independent Engineer Quality Assurance Plan (the "IE QAP"), taking into account the requirements of the CDA Documents and Developer's Project Management Plan. The Independent Engineer shall amend the IE QAP with each change approved by the Parties necessary to comply with Good Industry Practice or to reflect a change approved by the Parties in working practice implemented by the Independent Engineer. In no event shall the IE QAP amend or modify the rights and obligations of Developer under the Project Management Plan (the "PMP") or the CDA.

2.1.1.2 Work Authorizations will be issued from time to time and shall set forth a detailed scope of services and compensation terms, consistent with the requirements of this Agreement.

2.1.2. The Independent Engineer shall report all matters jointly to TxDOT and Developer. The Independent Engineer shall provide the following simultaneously to TxDOT and Developer in writing: progress reports, quality reports, regular Audit reports, reports on performance requirements, targets and defects, other reports, and findings, opinions, evaluations, comments, objections and recommendations. The Independent Engineer acknowledges and agrees that such documents are created on a work-for-hire basis and are the intellectual property of TxDOT and Developer for use by each of them on an unrestricted basis.

2.1.3. The Independent Engineer has no authority to issue stop work orders or otherwise alter, suspend or delay the progress of the Work (except to give direction or order or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property) and therefore is not responsible for Developer's progress of the Work. In the performance of its duties hereunder, the Independent Engineer will exercise due diligence not to interfere, disrupt, delay or otherwise impede the efficient and timely planning, approval and execution of all aspects of the Work or the resolution of any questions or disagreements concerning the Work, and the Independent Engineer will exercise due diligence to avoid any delay or disruption of any design, construction, operation and maintenance of the Project.

2.1.4. The Independent Engineer shall review and comment on all Submittals for which TxDOT review, comment, or approval is authorized under the CDA, unless waived in writing by TxDOT and Developer for a specific Submittal or type of Submittal. The Independent Engineer shall perform compliance Audits in accordance with the CDA Documents and Work Authorizations issued hereunder.

2.1.4.1 Attached as Exhibit 4 to this Agreement is an initial list of the Submittals required under the CDA (as it may be amended, the "Submittal List"). The Parties agree that the Submittal List is not necessarily a conclusive list of all Submittals contemplated under the CDA and that the CDA shall be the source for determining the Submittals covered by this Agreement. The Independent Engineer shall review and comment on all Submittals on the Submittal List except to the extent the Submittal List states that review and comment is not required. If the Submittal List states that review and comment is at the option of TxDOT or Developer, the Independent Engineer shall review and comment on the Submittal if requested to do so in writing by either TxDOT or Developer. The Independent Engineer, TxDOT and Developer shall update the Submittal List annually, or as otherwise agreed, to conform to the CDA during the Term of this Agreement.

2.1.5. The Independent Engineer shall conduct the monitoring, reviewing, inspection, testing, reporting, Auditing and other oversight functions set forth in the CDA Documents and this Agreement.

2.1.6. The Independent Engineer shall monitor and Audit Developer and its books and records to assess compliance with requirements of the CDA Documents and the approved Project Management Plan, including (i) Audit review of Design Documents, Plans, Construction Documents and other Submittals and (ii) Audit review regarding Patron Confidential Information; as provided in CDA Section 14.6.7.

2.1.7. Wherever in the CDA Documents it is stated that the Independent Engineer shall or may perform an action, function or task, TxDOT and Developer agree that the Independent Engineer is given the right and obligation to perform the same under this Agreement.

2.1.8. The Independent Engineer shall increase the type and level of oversight as directed by TxDOT in accordance with the provisions set forth in CDA Section 22.3.3.

2.1.9. The Independent Engineer shall have the right and responsibility to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and Project Management Plan, to the extent appropriate as determined by the Independent Engineer for purposes of monitoring Developer's compliance with the requirements of the CDA Documents, and shall provide comments to TxDOT and Developer concerning any such tests and verifications attended.

2.1.10. The Independent Engineer shall have the right to, and shall, observe the business operations of Developer and its Contractors to assess the accuracy of books and records.

2.1.11. The Independent Engineer shall Audit and monitor the activities described in Developer's Project Management Plan to assess Developer's compliance with the commitments contained in the Project Management Plan and the requirements of the CDA Documents.

2.1.12. The Independent Engineer shall advise TxDOT and Developer of any repeating or fundamental Nonconforming Work and of any deficiencies in the manner the Work is inspected or tested.

2.2 Project Development

The Independent Engineer shall perform oversight, inspection, testing and Auditing respecting the Work in accordance with CDA Section 22.3.1 and as more particularly described in the IE QAP.

2.3 Management Systems

The Independent Engineer shall review and comment on the Traffic Management Plans submitted by Developer pursuant to CDA Section 22.2.

2.4 Project Schedule

The Independent Engineer shall review all Project Status Schedule Updates and other Project Schedule related Submittals by Developer and provide comments to TxDOT and Developer in accordance with the review procedures set forth in this Agreement and the IE QAP.

2.5.1 Noncompliance Points and Reporting

2.5.1. The Independent Engineer shall deliver written notice to TxDOT and Developer within one Business Day of discovery, or receipt of notification from Developer, of the occurrence of any breach or failure specified in Attachment 1 to Exhibit 18 to the CDA (Noncompliance Points Table), and of the applicable cure period allowed under the CDA and Noncompliance Points that may be assessed with respect thereto under the terms of the CDA. No such notification from the Independent Engineer, standing alone, shall be effective to either (i) impose Noncompliance Points, which right is reserved exclusively to TxDOT or (ii) determine whether or not a breach or failure in fact occurred or has been timely cured. The notice also shall set forth the Independent Engineer's recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof.

2.5.2. Within ten days of discovery by the Independent Engineer or receipt of notice from Developer, pursuant to CDA Section 28, of the occurrence of any breach or failure specified in Attachment 1 to Exhibit 18 to the CDA (Noncompliance Points Table), the Independent Engineer shall deliver to both TxDOT and Developer written notice setting forth its recommendation of whether to assess Noncompliance Points, and reasoning and analysis in support thereof.

2.5.3. Within ten days of receiving notice from TxDOT of any breach or failure to perform specified in Attachment 1 to Exhibit 18 to the CDA (Noncompliance Points Table), the Independent Engineer shall deliver to TxDOT and Developer written notice setting forth its recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof.

2.5.4. Upon receiving from Developer notice, in accordance with CDA Section 28.2, identifying the breach or failure for which it has been assessed Noncompliance Points, stating that Developer has completed cure and briefly describing the cure, including any modifications to the Project Management Plan to protect against future similar breaches or failures, the Independent Engineer shall promptly inspect to assess the work performed to effect completion of the cure and, if satisfied that the breach or failure is fully cured, shall deliver to TxDOT and Developer a written report regarding whether the breach or failure has been cured.

2.5.5. The Independent Engineer shall keep current records of the number of assessed Noncompliance Points and Uncured Noncompliance Points, and the date of each assessment and each cure. The Independent Engineer shall report such information to TxDOT and Developer in writing every quarter and otherwise upon written request from TxDOT or Developer.

2.6 Safety Compliance

2.6.1. If Developer provides to the Independent Engineer notice that a provision of the CDA Documents is erroneous, creates a potentially unsafe condition or is or becomes inconsistent with Good Industry Practice, the Independent Engineer shall provide an opinion to TxDOT and Developer regarding Developer's proposed cure.

2.6.2. The Independent Engineer shall provide personnel with expertise in quality control processes to Audit and file a report within 30 days after the end of each calendar year, until the first year after the Service Commencement Date, on (i) Developer's design control process, with particular regard to compliance with the quality assurance/quality control requirements of the Project Management Plan, and (ii) design safety control processes in place, design safety control plans in place, and recordkeeping for compliance with the CDA.

2.6.3. The Independent Engineer shall review Developer's Final Design Documents in accordance with prudent design Auditing practice and the IE QAP to assess whether the design reasonably conforms to the requirements of the CDA, including the Technical Provisions, and TxDOT's safety standards.

2.6.4. The Independent Engineer shall provide personnel with expertise in quality control/assurance/oversight processes that will perform Audits of Developer's compliance with the Project Management Plan and CDA requirements and file a report within 30 days after the end of each year during which construction work has been performed regarding compliance with the CDA with respect to (a) the qualifications of the construction staff being used, (b) construction safety control processes in place, (c) construction safety control plans in place, and (d) recordkeeping.

2.6.5. The Independent Engineer shall investigate, analyze and report on Safety Compliance by Developer and Developer's performance of Safety Compliance Orders.

2.6.6. The Independent Engineer shall consult with TxDOT and Developer if requested regarding the issuance of a Safety Compliance Order.

2.6.7. The Independent Engineer shall monitor and inspect for the purpose of assessing whether any circumstances exist that warrant issuance of a Safety Compliance Order, and give reports and recommendations to TxDOT and Developer with respect thereto.

2.6.8. The Independent Engineer shall comply with Developer's safety procedures, and those of its Contractors, but is otherwise not responsible for jobsite safety conditions except for responsibility to the Independent Engineer's own employees.

2.7 Field Monitoring and Inspections

2.7.1. The Independent Engineer shall conduct field monitoring and inspections in accordance with the IE QAP, including in connection with TxDOT's certifications of Substantial Completion, Service Commencement and Final Acceptance.

2.7.2. The Independent Engineer shall make recommendations to TxDOT and Developer on Relief Event Determinations.

2.7.3. The Independent Engineer shall evaluate and report to TxDOT (with a copy to Developer) on Developer's estimates of cost impacts attributable to Compensation Events, Developer's projected impacts of proposed TxDOT Changes on the Project Schedule and Milestone Schedule, and Change Requests.

2.7.4. The Independent Engineer shall advise TxDOT and Developer whether the Independent Engineer recommends suspension of work if circumstances exist that would entitle TxDOT to order suspension of work under CDA Section 29.4.10.

2.7.5. At TxDOT's written request, in the event Developer provides a Compensation Event Notice to TxDOT, the Independent Engineer shall prepare and deliver to TxDOT and Developer within 30 days of the TxDOT request a comprehensive report as to Developer's estimate of the cost and schedule impacts attributable to the Compensation Event.

2.7.6. At TxDOT's written request in the event there is a proposed TxDOT Change, including the Independent Engineer's comments concerning Developer's estimate of the cost impacts and projected impact on the Project Schedule and Milestone Schedule.

2.7.7. At TxDOT's written request in the event there is a Change Request by Developer, the Independent Engineer shall prepare and deliver to TxDOT and Developer, at Developer's cost, within 30 days of the TxDOT request, a comprehensive report regarding the Change Request including the Independent Engineer's comments concerning Developer's estimate of the cost impacts and projected impact on the Project Schedule and Milestone Schedule.

2.8 Substantial Completion, Punch List, Service Commencement and Final Acceptance

2.8.1. For each Project Segment, during the 20-Day period preceding the date Developer anticipates it will achieve Substantial Completion, or such longer period as Developer may request after giving the notice required under Section 22.3.1 of the CDA, the Independent Engineer shall meet and confer with TxDOT and Developer and exchange information on a regular cooperative basis with them, with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the applicable Project Segment and the Final Design Documents and Construction Documents, and TxDOT's issuance of a written certificate of Substantial Completion.

2.8.2. For each Project Segment, during the period specified above in Section 2.8.1 preceding the date Developer anticipates it will achieve Substantial Completion, the Independent Engineer shall conduct an inspection of the applicable Project Segment and its components, a review of the Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and in any case within five Days after the end of the specified period preceding the date Developer anticipates it will achieve Substantial Completion. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within such specified period.

2.8.3. For each Project Segment, Developer shall prepare and maintain the Punch List in accordance with the CDA. Developer shall deliver to TxDOT and the Independent Engineer written notice identifying the date when Developer will commence Punch List field inspections and Punch List preparation, which notice shall be delivered not less than five Days prior to such commencement date. TxDOT may but is not obligated to and the Independent Engineer shall, at TxDOT's request, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission, except that TxDOT may remove an item added to the Punch List by the Independent Engineer. If Developer objects to the addition of an item by TxDOT or the Independent Engineer, the item shall be noted as included under protest and if TxDOT and Developer thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures.

2.8.4. For each Project Segment, during the 20-Day period following receipt of Developer's notification that all of the conditions precedent to Service Commencement specified in Section 9.5.1 of the CDA have been satisfied, the Independent Engineer shall meet and confer with TxDOT and Developer and exchange information on a regular cooperative basis with them, with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the applicable Project Segment and the data and documentation submitted by Developer, and TxDOT's issuance of a written certificate authorizing Service Commencement for the Project.

2.8.5. For each Project Segment, during the 20-Day period following receipt of Developer's notification that the conditions precedent to Service Commencement specified in Section 9.5.1 of the CDA have been satisfied, the Independent Engineer shall conduct an inspection of the applicable Project Segment and such other review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to Service Commencement have been satisfied. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection and review and in any case within five Days after the end of such 20-Day period. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection and review within such 20-Day period.

2.8.6. For each Project Segment, during the 15-day period following receipt of Developer's notification that it determined it has achieved Final Acceptance for the applicable Project Segment, the Independent Engineer shall meet and confer with TxDOT and Developer and exchange information on a regular cooperative basis with them, with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the Project and the Record Drawings for the applicable Project Segment, and TxDOT's issuance of a written certificate of Final Acceptance for the applicable Project Segment.

2.8.7. For each Project Segment, during the 15-day period following receipt of Developer's notification that it determined it has achieved Final Acceptance for applicable Project Segment, the

Independent Engineer shall conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and in any case by the end of such 15-Day period. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within such 15-Day period.

2.9 Operations and Maintenance

2.9.1. The Independent Engineer shall perform oversight, inspection, testing and Auditing respecting the O&M Work in accordance with CDA Section 22.3.1 and the approved IE QAP.

2.9.2. The Independent Engineer shall review and comment to TxDOT and Developer on the Renewal Work Schedule provided by Developer pursuant to CDA Section 19.2.1.

2.9.3. The Independent Engineer shall review and comment to TxDOT and Developer on the updated Renewal Work Schedule provided by Developer pursuant to CDA Section 19.2.3.

2.9.4. At TxDOT's request, the Independent Engineer shall promptly meet and confer with TxDOT to review and discuss the original or updated Renewal Work Schedule.

2.9.5. The Independent Engineer shall deliver to TxDOT and Developer, within 30 days after receipt of the original and each updated Renewal Work Schedule, comments, objections and recommendations with respect thereto in accordance with CDA Section 19.2.5.

2.9.6. The Independent Engineer shall review and comment on any schedule submitted by Developer pursuant to Section 15.2.4 of the CDA.

2.10 Proposed Capacity Improvements

2.10.1. The Independent Engineer shall review and comment to TxDOT and Developer on any proposed Capacity Improvements submitted pursuant to Section 25.3.1 of the CDA.

2.10.2. The Independent Engineer shall review, analyze, and provide recommendations to TxDOT and Developer regarding the preliminary schedule submitted by Developer pursuant to Section 25.3.3 of the CDA.

2.11 Termination Services

In any case where notice of termination of the CDA precedes the effective Early Termination Date, the Independent Engineer shall, upon the request of TxDOT, increase the level of monitoring, inspection, sampling, measuring, testing, Auditing and oversight of the Project and Developer's compliance with the obligations under this CDA, to such level as TxDOT reasonably determines it needs in order to protect against curtailment of services, quality and performance.

2.12 Disputes Board

2.12.1. The Independent Engineer shall provide any information and reports that may be requested by the Disputes Board and prepared by the Independent Engineer prior to such request, and shall defer to any decisions made by the Disputes Board.

2.12.2. After receiving written notice from either TxDOT or Developer that a Dispute has been asserted, the Independent Engineer shall not, despite any request from TxDOT, Developer or the Disputes Board, prepare any further written evaluations, opinions, reports, recommendations, objections, decisions, certifications or other determinations respecting the Dispute. The Independent Engineer shall, however, give oral or written testimony to explain or clarify its previous written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations at the request of TxDOT, Developer, or the Disputes Board.

2.13 Audits

2.13.1. The Independent Engineer shall Audit Developer, its Contractors and their respective books and records with respect to the Work as set forth in the CDA Documents, and as more particularly described in the approved IE QAP.

2.13.2. The Independent Engineer shall conduct process Auditing functions with respect to the Work set forth in Table 1 below at the frequency set forth in that table. The Independent Engineer shall prepare and provide reports on such Audits within 14 days of completing the Audit task.

Table 1 - Engineer's Audit Frequency

Process Audit Role	Frequency of Process Audit
Audit of Developer's design process (as distinguished from Developer's Design Documents) as necessary to Audit Developer's conformance with the CDA Documents and the Project Management Plan with regard to the Work.	Up to four times per year
Audit of a reasonable sampling of the Developer's construction operations and testing by Auditing Developer's Records for conformance with the CDA Documents and the Project Management Plan with regard to the Work.	Up to four times per year Offsite Plants: Up to four times per year Testing Labs: Once every 2 months during the construction season.
Audit of Developer during Operation and Maintenance for conformance with the CDA Documents and the Project Management Plan with regard to the Work.	Up to two times per year

2.13.3. The rights and obligations of the Independent Engineer to Audit and inspect the Work under this Agreement and the CDA shall include the right to monitor, Audit and investigate Developer's books and records with respect to performance of the Work and Developer's systems, practices and procedures concerning Patron Confidential Information. If the Independent Engineer requests access to Patron Confidential Information, Developer shall require the Independent Engineer to execute and deliver an appropriate confidentiality agreement consistent with the provisions of CDA Section 8.8 (relating to User Privacy).

2.13.4. The Independent Engineer shall select Auditable Sections, accompany Developer on physical inspections associated with Developer's Audit Inspections, conduct its own Audit Inspections, assess and score Developer's O&M Records, and assess and score the condition of Elements, as provided in Section 19.3 of the Technical Provisions (relating to Performance Monitoring).

2.13.5. The Independent Engineer shall Audit Developer's performance of the activities set forth in Developer's Public Information and Communications Plan.

2.13.6. The Independent Engineer shall Audit the books and records of Key Contractors with respect to the Work to confirm compliance with the CDA Documents and applicable Law. Developer shall arrange with Key Contractors for the Independent Engineer to gain access to such books and records.

2.14 Review Procedure

2.14.1. Following receipt of a Submittal from Developer, or a request from TxDOT for a recommendation, in either case commencing the "Review Period," the Independent Engineer shall, within the applicable time period set forth in Section 2.15 of this Agreement, either acknowledge receipt of the Submittal without comments, review with comments, provide its recommendations, or otherwise take action as required under this Agreement and consistent with the terms of the CDA Documents.

2.14.2. In the event that the Independent Engineer does not respond within the applicable time period set forth in Section 2.15, the Independent Engineer shall be deemed for the purpose of the CDA to have acknowledged receipt of a Submittal without comment or recommendation.

2.14.3. The Independent Engineer may provide the following comments on a Submittal by Developer under the Review Procedure:

1. Submittal does not meet the requirements of the CDA Documents,

2. Submittal does not comply with safety requirements under the CDA Documents,

3. Submittal is not in accordance with Good Industry Practice,

4. Submittal would, if adopted, result in a conflict with or violation of any Law or Governmental Approval,

5. Submittal is incomplete or not properly signed or not accompanied by reasonable evidence of approval by the appropriate Developer's Key Personnel,

6. Submittal proposes commitments, requirements, actions, terms or conditions that are not usual and customary arrangements that TxDOT offers or accepts for addressing similar circumstances affecting its own projects (applicable if the Submittal to be delivered to another Governmental Entity as a proposed Governmental Approval).

The Independent Engineer shall include with its comments a statement explaining in reasonably sufficient detail the basis for its comments and where appropriate, shall attach copies of any documents or standards in support thereof. The Independent Engineer's comments shall be provided simultaneously to TxDOT and Developer.

2.14.4. Developer shall provide responses to TxDOT's and the Independent Engineer's comments and/or objections with respect to a Developer's Submittal. The Independent Engineer shall provide to TxDOT and Developer, within the applicable Review Period, as set forth in Section 2.15, a determination as to whether the response or amended Submittal complies with the requirements of the CDA and recommend further action by TxDOT or Developer as appropriate.

2.14.5. If Developer does not provide a notification or respond to a comment by TxDOT or the Independent Engineer within the time period specified in the CDA, the Independent Engineer shall prepare a written notice on behalf of TxDOT as required by the CDA.

2.14.6. The Independent Engineer shall keep a running tally of the number of Submittals that are subject to review and comment or approval by TxDOT or by TxDOT and the Independent Engineer, and shall advise TxDOT and Developer whenever the number of concurrent Submittals exceeds the maximum number stated in the CDA, together with a recommendation regarding the additional review time required.

2.14.7. The Independent Engineer will recommend to TxDOT and Developer the extension of any time period within which TxDOT and/or the Independent Engineer is required to act following a Relief Event (as defined in the CDA) affecting TxDOT's and/or the Independent Engineer's ability to act.

2.15 Review Periods

2.15.1. The Independent Engineer shall have the following time periods to take action as required under the CDA Documents, whether such action calls for a review and comment on the Submittal, the making of recommendations, or otherwise.

2.15.1.1 If the CDA Documents require TxDOT, or TxDOT and the Independent Engineer, to review and comment on a Submittal within, or otherwise take action within, 14 Days or less, the Independent Engineer shall review and comment on the Submittal within, or otherwise take action within, the time period set forth in the CDA Documents less four Days.

2.15.1.2 If the CDA Documents require TxDOT, or TxDOT and the Independent Engineer, to review and comment on a Submittal within, or otherwise take action within, 15 to 20 Days, the Independent Engineer shall review and comment on the Submittal within, or otherwise take action within, the time period set forth in the CDA Documents less five Days.

2.15.1.3 If the CDA Documents require TxDOT, or TxDOT and the Independent Engineer, to review and comment on a Submittal within, or otherwise take action within, 20 to 30 Days, the Independent Engineer shall review and comment on the Submittal within, or otherwise take action within, the time period set forth in the CDA Documents less ten Days.

2.15.1.4 If the CDA Documents require TxDOT, or TxDOT and the Independent Engineer, to review and comment on a Submittal within, or otherwise take action within, 31 Days or more, the Independent Engineer shall review and comment on the Submittal within, or otherwise take action within, the time period set forth in the CDA Documents less 15 Days.

2.15.1.5 If this Agreement or the CDA Documents require only the Independent Engineer to review and comment on a Submittal within, or otherwise take action within, a set time period, the Independent Engineer shall review and comment on the Submittal within, or otherwise take action within, such time period.

2.15.1.6 If TxDOT determines in accordance with the CDA Documents that a time period for review, comment or other action by TxDOT on a Submittal should be extended or revised, the time period for the Independent Engineer to review and comment on the Submittal, or otherwise take action, with respect to such Submittal shall be increased by the same amount of time.

2.15.1.7 The Independent Engineer shall endeavor to reasonably accommodate a written request from TxDOT or Developer, with a copy of the request provided to the other Party, for expedited action on a specific Submittal, within the practical limitations on availability of personnel appropriate for acting on the types of Submittal in question.

2.16 Document Control

The Independent Engineer shall implement an electronic document control system and a review and comment logging system that enables web access tracking of every Submittal by Developer and every review and comment by the Independent Engineer and notifications or responses to comments provided by Developer. The logging system shall allow read-only open access to TxDOT and Developer and shall permit review and comment history to be followed. The electronic document control system shall be backed up daily and back up copies shall be stored in a safe location. The safe location must protect the back up copies from fire, water, theft, injury or damage of any kind.

2.17 Reports

2.17.1. In addition to the other reporting obligations set out in this Agreement, the Independent Engineer shall report to TxDOT and Developer on the progress of the design and construction of the Project at monthly intervals ("IE Monthly Report") until issue of the certificate of Service Commencement. During the design and construction period, the IE Monthly Report shall be issued within 5 days following receipt of Developer's Monthly Report pursuant to Section 2.1.1 of the Technical Provisions. The IE Monthly Report shall include the Independent Engineer's observations on Developer's Monthly Report, and a copy of Developer's Monthly Report shall be appended to the IE Monthly Report.

2.17.2. The Independent Engineer shall provide simultaneously to Developer and TxDOT all reports, quality reports, regular Audit reports, reports on Performance Requirements, Targets and Defects, other reports, and findings, opinions, evaluations, comments, objections and recommendations prepared by the Independent Engineer under this Agreement, and as described in the IE QAP. The Independent Engineer acknowledges and agrees that such documents are created on a work-for-hire basis and are the intellectual property of TxDOT and Developer for use by each of them on an unrestricted basis.

2.18 Access

2.18.1. TxDOT and Developer shall provide to the Independent Engineer access to all Project materials, records, systems, facilities and properties as set forth in the CDA Documents.

2.18.2. Developer and TxDOT at all times shall coordinate and cooperate with the Independent Engineer to facilitate the full, efficient, effective and timely performance by the Independent Engineer of monitoring, inspection, sampling, measuring, testing, reporting, Auditing and other oversight duties under this Agreement and the CDA.

2.18.3. The Independent Engineer shall be entitled to safe access to the Project and Developer's Project offices, operations buildings and data respecting the Project and the Work, during normal business hours and in accordance with Developer's and the Design-Build Contractor's reasonable policies and procedures regarding safety and security, including access to accurate and complete books, records, data and information regarding the Project and the Work. Provided the Independent Engineer complies with such policies and procedures, the Independent Engineer has the right to attend and witness any tests and verifications to be conducted pursuant to the CDA, including accuracy, availability and performance tests of the toll collection system. Developer shall provide to the Independent Engineer copies of all test results

and reports (which may be provided in electronic format in accordance with the CDA) within one Business Day.

2.19 Project Management Plan Review

The Independent Engineer shall provide independent reports to TxDOT and Developer consistent with the terms of the CDA Documents to recommend acceptance or otherwise of Developer's additions and amendments to the Project Management Plan. The Independent Engineer shall receive proposed amendments or additions to the Project Management Plan from Developer in accordance with the requirements of the CDA, review submitted parts of Developer's Project Management Plan and submit comments to TxDOT and Developer according to the review procedure set forth in the CDA and the IE QAP. The Independent Engineer shall report annually to TxDOT and Developer regarding Developer's compliance with the Project Management Plan, including recommendations consistent with the terms of the CDA Documents regarding the adequacy of the Project Management Plan and suggestions for any amendment or update of any part of the Project Management Plan to the extent necessary to comply with Good Industry Practice and the CDA.

2.20 Independent Engineer Recommendations

On TxDOT's written request, the Independent Engineer shall recommend the scope and timing of additional monitoring, Audit or independent inspection and quality control measures to be undertaken by either TxDOT or the Independent Engineer in order to reasonably monitor Developer's compliance with the CDA without delay or disruption to the performance of the Work.

2.21 Limitations on Independent Engineer's Authority

2.21.1. The Independent Engineer is authorized to act under this Agreement only where and to the extent that this Agreement expressly provides, and a Work Authorization has been issued authorizing the Independent Engineer to act. The Independent Engineer is required to deliver its reports, opinions and other deliverables within the time periods set forth in the CDA Documents and this Agreement.

2.21.2. The Independent Engineer shall have no authority to give instructions to Developer, deviate from or amend the CDA, relieve Developer of any duty or obligation under the CDA or otherwise to act on behalf of TxDOT under the CDA, except under Section 22.3.1(b)(iii) of the CDA.

2.21.3. The Independent Engineer has no authority under the CDA or this Agreement to:

1. Arbitrate or render binding decisions or judgments;

2. Approve or disapprove Submittals or Work, unless expressly provided otherwise in the CDA Documents or this Agreement for specific Submittals;

3. Conduct "over-the-shoulder" reviews of Design Documents or other Submittals;

4. Conduct formal prior reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, or unless TxDOT chooses to have the Independent Engineer do so pursuant to Section 22.3.3(d) of the CDA;

5. Direct design, construction, operations or maintenance of the Project, or order suspensions of Work, except to give such direction or order or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

6. Act as an agent of the TxDOT or Developer except under Section 9.3.1.2(c) of the CDA; or

7. Undertake Developer's primary responsibility for quality assurance and quality control.

ARTICLE 3. CONTRACT PERIOD

This Agreement shall become effective and binding on the Parties when executed by all Parties and shall continue thereafter for a term that ends no later than [*insert expiration date of Master Agreement and delete this bracketed language*], unless terminated earlier in accordance with its terms. The Parties recognize that TxDOT does not have the authority to extend this Agreement unless and until the Master Agreement is extended; however the Independent Engineer agrees that if TxDOT has the authority to extend the term of this Agreement, the Independent Engineer will agree to an extension of the term to the date of Final Acceptance.

ARTICLE 4. COMPENSATION

4.1 General

TxDOT and Developer shall compensate the Independent Engineer for its services under this Agreement as described in this Article 4, using the explanation of the terms Baseline Services, Contingent Services and Additional Services that is found in Exhibit 3.

The Independent Engineer agrees that at all times during the term of this Agreement, the Independent Engineer will perform the services required under this Agreement and the applicable Work Authorizations for compensation in accordance with the terms specified in the Independent Engineer's Fee Schedule attached as Exhibit 1. Upon request by either Developer or TxDOT, the Independent Engineer will, based on the Independent Engineer's Fee Schedule, prepare and submit within a reasonable time following such request, a written estimate of the total hours and cost of services that the Independent Engineer considers reasonable and appropriate to be rendered in the performance of the specific task(s) required by a proposed Work Authorization, with a breakdown of such hours and cost according to the proposed Work Authorization tasks to be performed by each of the Independent Engineer's personnel who will undertake such performance.

4.1.1. TxDOT and Developer shall each be separately responsible for payment of one-half of the compensation payable to the Independent Engineer for performance of Baseline Services in accordance with this Agreement, such responsibility to be several and not joint.

4.1.2. TxDOT and Developer shall compensate the Independent Engineer for all Contingent Services performed by the Independent Engineer that are authorized by Work Authorizations issued under this Agreement. Such compensation shall be in the amounts and on the terms set forth in the applicable Work Authorizations, and shall be in accordance with the Fee Schedule attached as Exhibit 1. TxDOT and Developer shall each be separately responsible for payment of one-half of the compensation payable to the Independent Engineer for performance of Contingent Services in accordance with this Agreement, such responsibility to be several and not joint.

4.1.3. TxDOT and Developer shall compensate the Independent Engineer for all Additional Services performed by the Independent Engineer pursuant to Work Authorizations issued under this Agreement. Such compensation shall be in the amounts and on the terms set forth in the applicable Work Authorizations. Each of TxDOT and Developer shall be separately responsible for payment of one-half of

the compensation payable to the Independent Engineer for Additional Services that are performed in accordance with this Agreement pursuant to jointly issued Work Authorizations, such responsibility to be several and not joint. In the event on the basis of an uncured Persistent Developer Default under the CDA for which TxDOT has given notice to Developer, TxDOT exercises its right under the CDA to require the Independent Engineer to perform additional oversight or verification testing and issues a Work Authorization to the Independent Engineer to perform such additional oversight or verification testing and such Work Authorization contemplates a compensation to the Independent Engineer at pricing in accordance with that set forth in the Independent Engineer's Fee Schedule attached as Exhibit 1 for a unit cost or specified rate basis, Developer, and not TxDOT, shall be responsible for the compensation payable to the Independent Engineer for such additional oversight or verification testing required under the CDA that is actually performed by the Independent Engineer in accordance with such Work Authorization and this Agreement. Notwithstanding the foregoing, prior to engaging the Independent Engineer for any such additional services, TxDOT shall first undertake reasonable good faith efforts to involve Developer in the negotiation of the compensation payable to the Independent Engineer pursuant to such Work Authorizations, and if TxDOT fails to do so, Developer shall nevertheless pay the Independent Engineer for the costs associated with such additional services, and Developer shall thereafter have the right to pursue remedies against TxDOT for such failure in accordance with this Agreement and the CDA. If either TxDOT or Developer, with the written consent of the other Party, issues a Work Authorization for Additional Services that are not included in any of the foregoing, (i) the Party issuing such Work Authorization, and no other Party, shall be responsible for the compensation payable to the Independent Engineer pursuant to such Work Authorization and (ii) the Independent Engineer shall perform the applicable Additional Services to the extent the same do not interfere with, or delay the performance of, any other duties of the Independent Engineer hereunder pursuant to Work Authorizations previously issued.

4.2 Cost Compliance

The Independent Engineer's costs must be eligible for payment in accordance with 48 CFR Part 31, Federal Acquisition Regulation (FAR 31).

4.3 Limitation on Compensation

The Independent Engineer shall not be entitled to any compensation for work performed (i) prior to the effective date of this Agreement or the applicable Work Authorization, or (ii) after termination of this Agreement, except as specifically provided in this Agreement or (iii) that is not expressly authorized under a Work Authorization.

4.4 TxDOT Issuance of Work Authorization under Master Agreement

In the event that TxDOT and the Independent Engineer have agreed on the terms of a new Work Authorization for Baseline Services or Contingent Services prior to the expiration of the operative Work Authorization for such services, and Developer has not agreed to such terms, after ten (10) days prior written notice form TxDOT, TxDOT may issue a Work Authorization under the Master Agreement for the performance of such services at TxDOT's sole cost and expense, but no such Work Authorization shall be inconsistent with the terms of this Agreement or the CDA Documents, until (i) the Parties come to agreement on the terms of a new Work Authorization, or (ii) a replacement Independent Engineer is selected in accordance with CDA Section 35.1.

ARTICLE 5. PAYMENT REQUIREMENTS

5.1 Monthly Billing Statements

The Independent Engineer shall request payment of its fees and costs incurred by submitting the original and one copy to TxDOT, and two copies to Developer, of an itemized billing statement in a form substantially similar to that attached as Exhibit 5. The Independent Engineer shall submit billing statements monthly.

5.2 Billing Statement

The billing statement shall show work performed during the billing period, separately itemized by duty in accordance with Sections 4.1.1, 4.1.2, and 4.1.3 above, with reference to the CDA section or Work Authorization for any billings for Contingent or Additional Services, the total amount earned to the date of submission, and the amount due and payable as of the date of the current billing statement for each Work Authorization. The billing statement shall indicate if the work has been completed or if the billing is for partial completion of the work. The billing statement shall indicate which portions of the work are the responsibility of TxDOT and which are the responsibility of Developer, as set forth in this Agreement and the CDA. As between TxDOT and the Independent Engineer, the amount paid by TxDOT shall be applied to the maximum amount payable under the Master Agreement; and the amount paid by Developer shall not be applied to the maximum amount payable under the Master Agreement.

5.3 Overhead Rates

To the extent that the Independent Engineer's compensation includes overhead, the Independent Engineer shall use the provisional overhead rate indicated in the Fee Schedule attached as Exhibit 1. If a periodic escalation of the provisional overhead rate is specified in Exhibit 1, the effective date of the revised provisional overhead rate must be included. For lump sum Work Authorizations, the overhead rate remains unchanged for the entire period covered by the Work Authorization.

5.4 Thirty Day Payments

TxDOT and Developer shall pay undisputed amounts no later than 30 days after receipt of a billing statement that complies with the invoice requirements set forth in this Article.

5.5 Withholding Payments by TxDOT

TxDOT reserves the right to withhold payment of its portion of the Independent Engineer's billing statement in the event of any of the following: (1) If a dispute over the Independent Engineer's services or costs thereof is not resolved within a thirty day period; (2) pending verification of satisfactory services performed; (3) the Independent Engineer becomes a delinquent obligor as set forth in Section 231.006 of the Family Code; (4) required reports are not received from the Independent Engineer; (5) the State Comptroller of Public Accounts will not issue a warrant to the Independent Engineer; or (6) the Independent Engineer has not paid subproviders in accordance with this Agreement. In the event that payment is withheld, TxDOT shall notify the Independent Engineer and Developer and shall identify the reason for withholding the payment.

5.6 Withholding Payments by Developer

If (1) there is a dispute over the Independent Engineer's services or costs thereof and such dispute is not resolved within a 30-Day period; (2) there is pending verification of performance of services in accordance with the requirements of this Agreement; (3) required reports are not received from the Independent Engineer; or (4) the Independent Engineer has not paid subproviders in accordance with this Agreement, then Developer, at its election, shall have the right to either (A) withhold payment of its portion or the disputed portion, as applicable, of the Independent Engineer's billing statement, or (B) pay

its portion or the disputed portion, as applicable, of the Independent Engineer's billing statement. In the event that payment is withheld, Developer shall notify the Independent Engineer and TxDOT of the basis for withholding payment. If Developer elects to withhold payment, and it is finally determined in accordance with the dispute procedures set forth in Section 7.23 of this Agreement that Developer wrongfully withheld such payment, upon such final decision, Developer shall pay the Independent Engineer the amount determined to be payable to the Independent Engineer in accordance with such final decision, plus interest on such amount at the LIBOR rate from the date such payment was due and payable until the date such payment is made by Developer. If Developer elects to pay the Independent Engineer, and it is finally determined in accordance with the dispute procedures set forth in Section 7.23 of this Agreement that the Independent Engineer was not entitled to all or any portion of such payment, upon such final decision, the Independent Engineer shall repay Developer the amount of any overpayment determined to be payable to Developer in accordance with such final decision, plus interest on such overpayment at the LIBOR rate from the date such overpayment was made until the date such overpayment is repaid by the Independent Engineer.

5.7 Required DBE/HUB Reports

5.7.1. As required in Exhibit 6 (Disadvantaged Business Enterprise for Federal-Aid Professional or Technical Services Contracts, the same document that is attached as Attachment H to the Master Agreement) the Independent Engineer shall submit Progress Assessment Reports to report actual payments made to Disadvantaged Business Enterprises or Historically Underutilized Businesses. One copy shall be submitted with each billing statement and one copy shall be submitted to the address included in Exhibit 6.

5.7.2. Prior to contract closeout, the Independent Engineer shall submit a Final Report in the form of Form H-4 attached to Exhibit 6 to the address set forth in Exhibit 6.

5.7.3. The Independent Engineer shall submit a separate report with each billing statement showing the percentage completion of the work accomplished during the billing period and the percentage completion to date, and any additional written report requested by TxDOT to document the progress of the work.

5.8 Subproviders and Suppliers List

Pursuant to requirements of 43 Texas Administrative Code § 9.50 *et seq.*, the Independent Engineer must provide TxDOT a list of all subproviders and suppliers that submitted quotes or proposals for subcontracts in the form of Form H-5 attached to Exhibit 6. This list shall include subproviders and suppliers names, addresses, telephone numbers, and type of work desired. The Independent Engineer shall also provide a copy of this list to Developer.

5.9 Debt to the State

If the State Comptroller of Public Accounts is prohibited from issuing a warrant to the Independent Engineer because of a debt owed to the State or TxDOT, TxDOT shall apply to the debt or delinquent tax all payment due the Independent Engineer, until the debt or delinquent tax is paid in full.

5.10 Audit

The State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as

acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

5.11 Independent Engineer Payment of Subproviders

No later than ten days after receiving payment from TxDOT and Developer, the Independent Engineer shall pay all subproviders undisputed amounts due and payable for work performed under a subcontract authorized hereunder. TxDOT and Developer may withhold all payments that have or may become due if the Independent Engineer fails to comply with the ten-day payment requirement. If the Independent Engineer is not in compliance with such ten-day requirement, on three days advance notice to the Independent Engineer and Developer, TxDOT may also suspend the work under this Agreement until subproviders are paid undisputed amounts due and payable. This requirement also applies to all lower tier subproviders, and this provision must be incorporated into all subcontracts.

ARTICLE 6. SIGNATORY WARRANTY

The undersigned signatory for the Independent Engineer hereby represents and warrants that he or she is an officer of the 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 firm. These representations and warranties are made for the purpose of inducing TxDOT and Developer to enter into this Agreement.

ARTICLE 7. GENERAL PROVISIONS

7.1 Instructions and Notices to the Independent Engineer

Any Party providing instruction and notices to the Independent Engineer shall provide a copy to the other Party**.**

7.2 Disclaimer

TxDOT and Developer acknowledge that the Independent Engineer has no duty and obligation to cause Developer's Work or the Project to satisfy the standards and requirements of the CDA Documents.

7.3 Progress

7.3.1. The Independent Engineer shall from time to time during the progress of the services performed hereunder, and as described in the IE QAP and applicable Work Authorizations, confer with TxDOT and Developer. The Independent Engineer shall prepare and present such information as may be pertinent and necessary or as may be requested by TxDOT and Developer in order to evaluate features of the Independent Engineer's services hereunder.

7.3.2. At the request of TxDOT, Developer, or the Independent Engineer, the representatives of the Parties shall meet at a location in Austin, Texas designated by TxDOT to discuss progress of services provided by the Independent Engineer. These meetings shall also include evaluation of the Independent Engineer's services when requested by TxDOT or Developer.

7.3.3. If federal funds are used to reimburse costs incurred under this Agreement, the services of the Independent Engineer and all reimbursements will be subject to periodic review by the U.S. Department of Transportation.

7.4 Suspension of Work

7.4.1. TxDOT and Developer may jointly direct the Independent Engineer to suspend the services under this Agreement by providing written notice of such suspension, setting forth the effective date of such suspension, to the Independent Engineer. Neither TxDOT nor Developer, acting alone, may suspend the Independent Engineer's work pursuant to this Section 7.4.1. Suspension of the work shall suspend, but not terminate, the current Work Authorization.

7.4.2. The work of the Independent Engineer under this Agreement that has been previously suspended pursuant to Section 7.4.1, may be reinstated and resumed in full force and effect upon written notice from TxDOT and Developer, given in accordance with the provisions of this Section 7.4.2, directing the Independent Engineer to resume the work in accordance with the suspended Work Authorization within the period of time specified in this Section 7.4.2. The Independent Engineer shall maintain adequate personnel necessary to resume the work on 15 days' notice at the sole cost of the Independent Engineer for a period of 2 months following the effective date of any suspension, and if TxDOT and Developer deliver notice to the Independent Engineer to resume the work previously suspended within such 2-month period, the Independent Engineer shall resume such work within 15 days of such notice without additional cost to Developer or TxDOT. If Developer and TxDOT determine or reasonably believe that the suspension period will exceed 2 months, Developer and TxDOT shall send notice to the Independent Engineer no later than 15 days prior to the expiration of such 2-month period electing one of the following: (i) to require that the Independent Engineer continue to maintain adequate personnel necessary to resume the work on 15 days' notice, or (ii) to require the Independent Engineer to be able to resume the work on 45 days' notice. If Developer and TxDOT fail to give such notice, TxDOT and Developer shall be deemed to have elected that the Independent Engineer shall maintain adequate personnel necessary to resume the work on 15 days' notice. Notwithstanding the foregoing, Developer and TxDOT shall have the right at any time after such initial election (or deemed election) to change such initial election by delivering notice to the Independent Engineer of such change. Should Developer and TxDOT elect option (i) (either initially or in a subsequently delivered notice) or should Developer and TxDOT fail to give such notice electing option (i) or (ii), Developer and TxDOT shall each pay one-half of 80% of the costs incurred by the Independent Engineer to maintain adequate personnel necessary to resume the work on 15 days' notice throughout the remaining duration of the suspension, and if TxDOT and Developer deliver notice to the Independent Engineer to resume the work previously suspended, the Independent Engineer shall resume such work within 15 days of such notice. Should Developer and TxDOT elect option (ii) (either initially or in a subsequently delivered notice), Developer and TxDOT shall pay one-half each of the costs incurred by the Independent Engineer during the 30 days' prior to such restart date in order to regain adequate personnel to resume the work on such date, and if TxDOT and Developer deliver notice to the Independent Engineer to resume the work previously suspended, the Independent Engineer shall resume such work within 45 days of such notice.

7.4.3. If TxDOT and Developer suspend the services of the Independent Engineer under the Agreement, the term of this Agreement as determined in Article 3 of this Agreement (Contract Period) is not affected and the term of this Agreement will expire on the date specified in Article 3 unless it is amended to authorize additional time.

Neither TxDOT nor Developer shall have any liability for services performed by the Independent Engineer or costs incurred by the Independent Engineer (a) prior to the effective date of this Agreement, (b) during periods when work by the Independent Engineer is suspended, or (c) after the expiration of the term or earlier termination of this Agreement.

7.5 Ownership of Data

7.5.1. All services provided under this Agreement are considered work-for-hire and as such all data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this Agreement are the property of TxDOT and Developer.

7.5.2. All documents prepared by the Independent Engineer, and all documents furnished to the Independent Engineer by TxDOT or the Developer, shall be delivered to TxDOT and the Developer upon request by one or both. Subject to the terms of the CDA, the Independent Engineer, at its own expense, may retain copies of such documents or any other data which it has furnished TxDOT and/or the Developer under this Agreement, but further use of the data is subject to permission by TxDOT and the Developer.

7.5.3 The Independent Engineer (1) will not release any Submittal created or collected under this Agreement except to its subproviders as necessary to perform its work under this Agreement; (2) shall include a provision in all subcontracts which acknowledges TxDOT's and Developer's ownership of the design plan and prohibits its use for any use other than the Project identified in this Agreement; and (3) is responsible for any improper use of the design plan by its employees, officers, or subproviders, including costs, damages or other liability resulting from improper use. Neither the Independent Engineer nor any subprovider may charge a fee for the portion of the design plan created by TxDOT or Developer.

7.6 Public Information and Confidentiality

7.6.1. TxDOT will comply with the CDA, Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information produced under this Agreement.

7.6.2. The Independent Engineer shall not disclose drawings or information obtained from TxDOT or Developer under this Agreement without the express written consent of both TxDOT and Developer, and shall require execution of a confidentiality agreement by employees or staff to whom such disclosure is made. However, if the Independent Engineer receives a subpoena or other court order regarding such drawings or information, the Independent Engineer shall immediately provide notice thereof to TxDOT and Developer and will cooperate with any attempts to resist such court order. Thereafter, the Independent Engineer may disclose such information if so required by binding order of a court or other judicial tribunal of competent jurisdiction. The Independent Engineer may make copies of drawings and information provided by TxDOT or Developer only for the purpose of performing its work under this Agreement. The Independent Engineer may disclose to its subcontractors drawings or information provided by TxDOT or Developer with the written consent of TxDOT and Developer, such consent not to be unreasonable withheld.

7.7 Personnel, Equipment and Material

7.7.1. The Independent Engineer shall provide competent personnel and equipment in sufficient numbers to perform the services required under this Agreement. The Independent Engineer represents and warrants that it either currently has an adequate number of competent and properly licensed personnel in its employment for performance of the services required under this Agreement, or it will, in advance of needing them, be able to obtain such personnel from sources other than TxDOT or Developer in sufficient numbers to supply the services contemplated hereunder.

7.7.2. All employees and subproviders of the Independent Engineer assigned to this Agreement shall have such knowledge and experience as will enable them to competently perform the duties assigned to them, the resolution of any questions or disagreements concerning the Work, and the avoidance of delay or disruption to the Work, including any design, construction, operation and maintenance of the

Project. Either TxDOT or Developer may require removal of the Independent Engineer's employees or subproviders from performing all or part of the services or other responsibilities assigned to them under this Agreement for reasonable cause or for material breach of this Agreement.

7.7.3. The Independent Engineer must notify TxDOT and Developer in writing as soon as possible, but no later than three business days after a project manager or other key person ceases employment with the Independent Engineer, giving the reason for removal.

7.7.4. The initial project manager and key personnel for the Independent Engineer are identified in Exhibit 7. The Independent Engineer may not replace the project manager or other key personnel without prior consent of TxDOT and Developer. TxDOT and Developer must be satisfied that the new project manager or other key personnel is qualified to provide the authorized services. If TxDOT and Developer determine that the new project manager or key personnel is not acceptable, the Independent Engineer may not use that person in that capacity and shall replace him or her with one satisfactory to TxDOT and Developer within forty-five (45) days.

7.7.5. Unless a specific provision of this Agreement or Work Authorization states to the contrary, TxDOT shall own all intellectual property purchased or developed by the Independent Engineer under this Agreement and all equipment purchased by the Independent Engineer or its subcontractors under this Agreement for which reimbursement is provided under this Agreement. All such intellectual property and equipment shall be delivered to TxDOT when this Agreement terminates, or when it is no longer needed for work performed under this Agreement, whichever occurs first.

7.8 Subcontracting

7.8.1. The Independent Engineer shall not assign, subcontract or transfer any portion of professional services related to the work under this Agreement without prior written approval from TxDOT and Developer.

7.8.2. The Independent Engineer's subcontracting program shall comply with the requirements set forth in Exhibit 6 (Disadvantaged Business Enterprise for Federal-Aid Professional or Technical Services Contracts).

7.8.3. All subcontracts for professional services shall include the provisions included in this Agreement, and any provisions required by law. The Independent Engineer is authorized to pay subproviders in accordance with the terms of the subcontract, and TxDOT and Developer acknowledge that the basis for payments to be made to subproviders may differ from the basis for payments by TxDOT and Developer hereunder.

7.8.4. Subcontracts for professional services in excess of $25,000 shall be delivered to TxDOT and Developer prior to performance of work thereunder for review and approval.

7.8.5. No subcontract relieves the Independent Engineer of any responsibilities under this Agreement.

7.9 Inspection of Work

7.9.1. TxDOT, Developer, FHWA (if federal funds are involved), and any of their respective authorized representatives shall have the right at all reasonable times to review or otherwise evaluate the work performed hereunder and to inspect the premises in which it is being performed.

7.9.2. If any review or evaluation is made on the premises of the Independent Engineer or a subprovider, the Independent Engineer shall provide and require its subproviders to provide all reasonable facilities and assistance for the safety and convenience of the state or federal representatives or Developer in the performance of their duties.

7.9.3. The Independent Engineer's Auditing/monitoring results shall be accessible throughout the term of the CDA and for 24 months thereafter to TxDOT and Developer in a Project document control system operated by the Independent Engineer and separate from any system operated by Developer.

7.9.4. The Independent Engineer shall implement an electronic records management and quality management system that enables full compliance with all of the Independent Engineer's duties as described in the scope and which enables read-only web access by TxDOT and Developer to reports, opinions and deliverables produced by the Independent Engineer and the records on which they are based. See Section 2.16 for additional requirements relating to these systems.

7.9.5. TxDOT and Developer reserve the right to monitor and verify the Independent Engineer's proper performance of its responsibilities and obligations hereunder, including compliance with Good Industry Practice.

7.10 Violation of Contract Terms

7.10.1. Violation of any terms hereof, breach of contract, or default by the Independent Engineer shall be grounds for termination of this Agreement as specified in Section 7.11, and any increased or additional cost incurred by TxDOT or Developer arising from the Independent Engineer's default, breach of contract or violation of contract terms shall be paid by the Independent Engineer.

7.10.2. This provision shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be invoked by any party and shall be cumulative.

7.11 Termination

7.11.1. This Agreement may be terminated before the end of the term specified herein upon occurrence of any of the following conditions.

1. By mutual agreement and consent, in writing from all Parties.

2. By TxDOT and Developer, acting jointly by notice in writing to the Independent Engineer, as a consequence of failure by the Independent Engineer to perform the services set forth herein in a satisfactory manner.

3. By the Independent Engineer, upon the material breach by either TxDOT or Developer of their respective obligations as set forth herein, following written notice that sets forth with particularity the alleged condition(s) of default and the expiration of a 45-day cure period during which time either Party shall have the opportunity to cure the default; provided that upon request of TxDOT or Developer, the Independent Engineer shall continue to perform the services provided for in this

Agreement and the applicable Work Authorizations for a period of up to 90 days after expiration of the cure period.

4. By TxDOT and Developer acting jointly for reasons of their own, not subject to the consent of the Independent Engineer, by giving 30 Business Days' notice of termination in writing to the Independent Engineer.

5. By TxDOT, if the Independent Engineer violates the provisions of Section 7.18 (Gratuities), or Exhibit 6. TxDOT and Developer agree as between themselves that no termination of the Independent Engineer shall become effective until a replacement is selected and engaged in accordance with the CDA.

7.11.2. Should TxDOT or TxDOT and Developer terminate this Agreement as provided in Section 7.11.1, no compensation other than fees due and payable at the time of termination shall thereafter be paid to the Independent Engineer, except as provided in Section 7.11.8 below. In determining the value of the work performed by the Independent Engineer prior to termination, TxDOT and Developer shall be the sole arbiters. Nothing in this Section 7.11.2 shall be construed as a waiver of the other legal or equitable remedies set forth in this Agreement. Compensation for work performed prior to termination under a lump sum Work Authorization will be based on a percentage of the work completed at that time. Should TxDOT and Developer terminate this Agreement pursuant to Section 7.11.1(4) above, the Independent Engineer shall not be entitled to compensation for work performed during the 30-day notice period in excess of the amount incurred during the preceding thirty days.

7.11.3. If the Independent Engineer defaults in the performance of this Agreement or if TxDOT and Developer terminate this Agreement for fault on the part of the Independent Engineer, TxDOT and Developer will give consideration to the following when calculating the value of the completed services: (1) the actual costs incurred (not to exceed the rates set forth in the then-current Fee Schedule) by the Independent Engineer in performing the services to the date of default; (2) the amount of services required which was satisfactorily completed to date of default; (3) the value of the services which is usable to TxDOT or Developer; (4) the cost to TxDOT and Developer of procuring and employing another firm to complete the required services; (5) the time required to procure and employ another firm to complete the services; and (6) other factors which affect the value to TxDOT and Developer of the services performed.

7.11.4. TxDOT and Developer shall use the then-current Fee Schedule under the applicable Work Authorization(s) in determining the value of the services performed up to the time of termination. In the case of partially completed engineering services, eligible costs will be calculated as set forth in the Fee Schedule. The sum of the provisional overhead percentage rate for payroll additives and for general and administrative overhead costs during the years in which work was performed shall be used to calculate partial payments. Any portion of the fixed fee not previously paid in the partial payments shall not be included in the final payment.

7.11.5. Except with respect to defaults of subproviders, the Independent Engineer shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms (including any failure to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the Independent Engineer. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. The Independent Engineer shall provide TxDOT and Developer prompt notice of any such impact hereunder and shall use diligent and reasonable efforts to minimize any such impact on the performance of the Independent Engineer's services.

7.11.6. The termination of this Agreement and payment of an amount in settlement as prescribed above shall extinguish the rights, duties and obligations of TxDOT, Developer and the Independent Engineer under this Agreement, except for those provisions that establish responsibilities that extend beyond the term of this Agreement.

7.11.7. If termination of this Agreement is due to the failure of the Independent Engineer to fulfill its obligations hereunder, the Independent Engineer shall be liable to TxDOT and Developer for any additional cost to TxDOT and Developer, including costs of replacement of the Independent Engineer.

7.11.8. TxDOT and Developer, may, in their discretion, elect to extend the services of the Independent Engineer under this Agreement for a period or periods after termination pursuant to Section 7.11.1 hereof, not to exceed 180 days from the end of the applicable cure period, during the time in which they are seeking a replacement for the Independent Engineer. Any such extension shall be in writing, signed by both TxDOT and Developer, and shall state the length of the extension. The Independent Engineer shall accept any such extensions. The Independent Engineer shall be compensated for its work under any such extensions using the then-current Fee Schedule, or as otherwise agreed by the parties.

7.12 Compliance With Laws

The Independent Engineer shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations. When required, the Independent Engineer shall furnish TxDOT and Developer with satisfactory proof of its compliance therewith.

7.13 Changes and Supplemental Agreements

7.13.1. The Parties may make changes to and supplement this Agreement only through Work Authorizations, change orders or supplemental agreements executed and delivered by all of the Parties.

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

7.14 Indemnification

7.14.1. The Independent Engineer shall indemnify, defend, protect and hold harmless TxDOT, Developer and their respective officers and employees from all costs, claims and liability due to activities of the Independent Engineer, its agents or employees, performed under this Agreement and which are caused by or result from negligent error or omission, or negligent act of the Independent Engineer or of any person employed by the Independent Engineer.

7.14.2. The Independent Engineer shall also indemnify, defend, protect and hold harmless TxDOT and Developer from any and all expense, including, but not limited to, attorney fees which may be incurred by TxDOT or Developer in litigation or otherwise resisting said claim or liabilities which may be imposed on TxDOT or Developer as a result of such negligent acts, errors or omissions by the Independent Engineer, its agents or employees.

7.14.3. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability in any calendar year for negligent acts, errors or omissions occurring in such calendar year (regardless of when any claim therefor is made), in the aggregate, of Independent Engineer and Independent Engineer's officers, directors, partners, employees, agents, and Independent Engineer's consultants, and any of them, to Developer and anyone claiming by, through, or under Developer for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause or causes, including but not limited to professional negligent acts, errors or omissions, or breach of contract or warranty express or implied of Independent Engineer or Independent Engineer's officers, directors, partners, employees, agents, or Independent Engineer's consultants, or any of them, shall not exceed the total compensation payable to the Independent Engineer under this Agreement during such calendar year when the negligent acts, errors or omissions occurred; provided, however, that the foregoing limitation on liability does not apply to (i) the Independent Engineer's indemnity obligations under Sections 7.14.1 and 7.14.2 for third party claims for property damage or personal injury due to the negligent acts, errors or omissions of the Independent Engineer, or (ii) claims arising out of Independent Engineer's gross negligence or intentional misconduct. Should the total amount of all such claims, losses, costs or damages for any such calendar year exceed the cap set forth in this paragraph for such calendar year, TxDOT and Developer shall, upon the request of either of them made to the other, jointly terminate this Agreement on 30-Days' notice to the Independent Engineer.

7.14.4. Developer shall indemnify the Independent Engineer in the same manner as Developer indemnifies the Indemnified Parties as set forth in Section 26.5 et seq. of the CDA (relating to Indemnity) in accordance with the procedures set forth in Section 26.6 of the CDA.

7.14.5. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANOTHER PARTY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES OR RELATED PARTIES; *PROVIDED, HOWEVER*, THAT THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (i) CLAIMS OF ANY PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR PROPERTY DAMAGE OR PERSONAL INJURY DUE TO THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF A PARTY, (ii) CLAIMS OF ANY PARTY ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, OR (iii) AS BETWEEN TxDOT AND DEVELOPER ONLY, THE RIGHTS AND OBLIGATIONS OF TxDOT AND DEVELOPER UNDER THE CDA DOCUMENTS, WHICH SHALL BE GOVERNED BY THE CDA DOCUMENTS.

7.15 Independent Engineer's Responsibility

The Independent Engineer shall be responsible for the accuracy of its work and shall promptly, at no cost to TxDOT or Developer, make necessary revisions or corrections resulting from its errors, omissions, or negligent acts.

7.16 Noncollusion

7.16.1. The Independent Engineer warrants to TxDOT and Developer that it has not employed or retained any company or person, other than a bona fide employee working solely for the Independent Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or

engineer any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

7.16.2. Subject to Section 7.11.1 of this Agreement, for breach or violation of this warranty, TxDOT or Developer shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the contract price or compensation, or otherwise recover from the Independent Engineer, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

7.17 Insurance

The Independent Engineer certifies that it has insurance on file with the Contract Services Section of the Office of General Counsel of the Texas Department of Transportation in the amount specified on Texas Department of Transportation Form 20.102-CSS or Form 1560-CSS Certificate of Insurance, as required by TxDOT. No other proof of insurance is acceptable to TxDOT and Developer. In addition, the Independent Engineer shall have such policies endorsed to name Developer as an additional insured and deliver to Developer copies of the insurance on file and described above. Notwithstanding the foregoing, the Independent Engineer shall not be required to have its professional errors and omissions policy endorsed to name Developer as an additional insured. The Independent Engineer certifies that it will keep current insurance on file with that office for the duration of the contract period. If insurance lapses during the contract period, the Independent Engineer must stop work until a new certificate of insurance is provided.

7.18 Gratuities

7.18.1. Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation 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 the Texas Department of Transportation or his or her designee.

7.18.2. 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 mentioned above. Failure on the part of the Independent Engineer to adhere to this policy may result in the termination of this Agreement in accordance with Section 7.11 hereof.

7.19 Disadvantaged Business Enterprise or Historically Underutilized Business Requirements

The Independent Engineer agrees to comply with the requirements set forth in Exhibit 6 with an assigned goal or without an assigned goal, as determined by TxDOT.

7.20 Maintenance, Retention and Audit of Records

7.20.1. The Independent Engineer shall maintain all books, documents, papers, accounting records and other evidence pertaining to the costs Independent Engineer incurred and the services that the Independent Engineer provided hereunder (hereinafter "Records"). The Independent Engineer shall make the Records available at its office or another safe and convenient location reasonably acceptable to Developer and TxDOT during the term of this Agreement and thereafter for four years from the date of final payment under this Agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

7.20.2. TxDOT, Developer, any of their duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General and the Comptroller General shall have access to the Independent Engineer's Records which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

7.20.3. The Records maintained by the Independent Engineer hereunder shall, upon termination of this Agreement, be transferred by the Independent Engineer to the designated successor independent engineer identified in writing by TxDOT, and the Independent Engineer shall have no further right or title to any such Records. The Independent Engineer may retain copies of Records necessary to maintain its own compliance with tax laws and other applicable laws of local, state or federal government.

7.21 Civil Rights Compliance

7.21.1. The Independent Engineer shall comply with the regulations of the Department of Transportation, Title 49, Code of Federal Regulations, Parts 21, 24, 26 and 60 as they relate to nondiscrimination; and with Executive Order 11246 titled Equal Employment Opportunity as amended by Executive Order 11375 (collectively, the "Regulations").

7.21.2. The Independent Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

7.21.3. In all solicitations either by competitive bidding or negotiation made by the Independent Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Independent Engineer of the Independent Engineer's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

7.21.4. The Independent Engineer shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by TxDOT or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the Independent Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Independent Engineer shall so certify to TxDOT or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

7.21.5. In the event of the Independent Engineer's noncompliance with the nondiscrimination provisions of this Agreement, TxDOT shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Independent Engineer under the Agreement until the Independent Engineer complies and/or

2. cancellation, termination, or suspension of the Agreement, in whole or in part, but any termination shall be in accordance with Section 7.11.

7.21.6. The Independent Engineer shall include the provisions of Sections 7.21.1 through 7.21.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Independent Engineer shall take such action with respect to any subcontract or procurement as TxDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event an Independent

Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Independent Engineer may request TxDOT to enter into such litigation to protect the interests of TxDOT; and, in addition, the Independent Engineer may request the United States to enter into such litigation to protect the interests of the United States.

7.22 Child Support Statement

The Independent Engineer certifies that it has a child support statement on file with the Contract Services Section of the Office of General Counsel of the Texas Department of Transportation. The Independent Engineer is responsible for keeping the child support statement current and on file with that office for the duration of the contract period. The Independent Engineer further certifies that the child support statement on file contains the child support information for the individuals or business entities named in this contract. Under Section 231.006, Family Code, the Independent Engineer certifies that the individual or business entity named in this Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate, but any termination shall be in accordance with Section 7.11.

7.23 Disputes

7.23.1. The Independent Engineer shall be responsible for the settlement of all contractual and administrative issues arising out of any procurement made by the Independent Engineer in support of the services authorized herein.

7.23.2. Any dispute between TxDOT and the Independent Engineer concerning the work hereunder or additional costs, or any non-procurement issues shall be settled in accordance with 43 Texas Administrative Code §9.2, provided, however, that any dispute between TxDOT and Developer relating to this Agreement or their respective obligations hereunder shall be settled pursuant to the dispute resolution provisions of the CDA.

7.23.3. Any dispute between Developer and Independent Engineer shall be resolved pursuant to the following provisions:

7.23.3.1 As a condition to either Developer or Independent Engineer pursuing a claim or dispute against the other Party through arbitration, the claiming Party shall first initiate informal resolution procedures by serving a written notice on the other Party's authorized representative. The notice shall contain (i) a concise statement describing the claim or matter in dispute, including a description of its nature, circumstances and cause, (ii) an explanation of the basis and justification for the claim, including reference to any pertinent provision(s) of this Agreement, (iii) if applicable, the estimated dollar amount of the claim and how that estimate was determined, (iv) the claiming Party's desired resolution, and (v) any other information the claiming Party deems relevant. Commencing within ten days after the notice is served and concluding ten business days thereafter, the authorized representatives of the Parties shall meet and confer, in good faith, to seek to resolve the claim or dispute raised in the claiming Party's notice. If they succeed in resolving the claim or dispute, Developer and Independent Engineer shall memorialize the resolution in writing. If the claim or dispute is not timely resolved under the foregoing procedures, then the claiming Party may initiate arbitration to resolve the claim or dispute pursuant to Section 7.23.3.2.

7.23.3.2 Any unresolved controversy between Developer and Independent Engineer arising under this Agreement shall be subject to final and binding arbitration. Such arbitration shall be governed by the provisions of the Texas General Arbitration Act (Texas Civil Practice and Remedies Code Section

171.001 et seq.). Arbitration shall be conducted in accordance with the Construction Arbitration Rules of the American Arbitration Association, subject to the provisions contained in Exhibit 8.

7.24 Successors and Assigns

The Independent Engineer, TxDOT and Developer do each hereby bind themselves, their successors, executors, administrators and assigns to each other party of this Agreement and to the successors, executors, administrators and assigns of such other parties in respect to all covenants of this Agreement. The Independent Engineer shall not assign, subcontract or transfer its interest in this Agreement without the prior written consent of TxDOT and Developer.

7.25 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.

7.26 Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto for the services authorized herein and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein; provided, however that as between TxDOT and the Independent Engineer, the terms of the Master Agreement shall remain effective as a separate agreement between TxDOT and the Independent Engineer.

7.27 Conflict of Interest

The Independent Engineer represents that its firm has no conflict of interest that would in any way interfere with its or its employees' performance of services for TxDOT and Developer or which in any way conflicts with the interests of TxDOT or Developer. The firm shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with interests of TxDOT or Developer.

7.28 Notices and Communications

7.28.1. All notices, correspondence and other communications under this Agreement, including but not limited to reports, notices, comments and recommendations, 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):

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

Attention:
Telephone:
Facsimile:
E-mail:

with a copy to:

Attention: _____
Telephone: _____
Facsimile: _____
E-mail:

7.28.3. All notices, correspondence and other communications to TxDOT shall be marked as regarding the TxDOT SH 288 Toll Lanes Project in Harris County and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Texas Department of Transportation
7600 Chevy Chase Drive, Building 2, 4th Floor
Austin, Texas 78752
Attn: Mr. Eddie Sanchez, P.E.
E-mail: Eddie.Sanchez@txdot.gov

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

Texas Department of Transportation
Attn: Office of General Counsel
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

7.28.4. All notices, correspondence and other communications to the Independent Engineer shall be delivered to the following address or as otherwise directed by the Independent Engineer:

Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

7.28.5. 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, correspondence or communications (including email) 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.).

7.29 Survival

The indemnifications, limitations and releases contained in this Agreement, the express obligations of the Parties following termination, the dispute resolution provisions, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the work under this Agreement, shall survive the expiration or earlier termination of this Agreement and/or the completion of the work under this Agreement.

7.30 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Travis County.

7.31 Counterparts

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

7.32 No Third Party Beneficiaries

Nothing in this paragraph or this Agreement shall be construed as creating a third party beneficiary relationship with any party not specifically identified as a party to this Agreement, and all such third party beneficiary relationships are specifically disclaimed.

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

[INDEPENDENT ENGINEER]

By: _____
Name: _____
Title: _____

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

[DEVELOPER]

By: _____
Name: _____
Title: _____

EXHIBIT 1

FEE SCHEDULE

[TO BE THE SAME AS UNDER THE MASTER AGREEMENT]

EXHIBIT 2

Description of Scope of Services for Preparation of IE QAP

The initial Work Authorization will not authorize performance of any of the below listed activities, only the development of the IE QAP. Subject to the terms of the Independent Engineer Agreement and the CDA, the Independent Engineer's function is to Audit, monitor, review and comment on the processes and procedures implemented by Developer to accomplish the Work; to assess quality; and report dually and independently to both Developer and TxDOT. Therefore, the IE QAP must be based on and work in concert with, the PMP/QMP written by Developer and approved by TxDOT. This IE QAP will be written to a similar level of detail as the PMP/QMP. Further procedures will be developed as specific QC and QA procedures are written and submitted by Developer and its team (Designer, Design-Build Contractor and etc.).

Within 60 Days of issuance of the Work Authorization for the same, the Independent Engineer shall, develop an Independent Engineer Quality Assurance Plan (IE QAP) for TxDOT, Developer and FHWA approval that describes detailed systems, procedures and processes for the implementation of the activities associated to its rights and responsibilities as stated in the Independent Engineer Agreement and in the CDA, including those stated in Section 9.3.1.2 of the CDA. The below listed activities is a summary for reference purposes of the duties performed by the Independent Engineer. The complete description of duties is found in the Independent Engineer Agreement and the CDA.

The frequency of the Independent Engineer's performance of the services listed below will be in accordance with the approved IE QAP.

No.	Duty	Reference
	Describe procedures to implement and maintain document control system for all Independent Engineer records, CDA defined TxDOT submittals and TxDOT's responses.	Section 2.16 (IE Agreement)
	Describe procedures used for compliance Audits, review and comment in accordance with the CDA for the following: ● submission by Developers of design plans and process ● implementation of Developers design plans and process, with particular regard to design safety plans and procedures and use of qualified personnel	CDA 22.3.1(b)(iv) CDA 8.1.1 and 22.3.1(b)(i) CDA 22.3.1(b)(i)
	● implementation of design plans and process ● submission by Developers of management plans and processes (not specific to design or permanent construction)	CDA 22.3.1(b)(i) CDA 8.1.1 and 22.3.1(b)(i)
	● implementation of Developers management plans and processes (not specific to design or permanent construction)	CDA 22.3.1(b)(i)

No.	Duty	Reference
	● implementation of Project Schedule ● temporary and permanent environmental measures ● implementation of construction safety control plan ● submissions by Developer of construction plans and processes ● implementation of Developer's construction plans and processes ● interim, revised, and Final Design Documents ● Safety Compliance and the performance of Safety Compliance Orders	Technical Provisions, Section 2.1.1 CDA 22.3.1(b)(i) CDA 22.3.1(b)(i) CDA 8.1.1 and 22.3.1(b)(i) CDA 22.3.1(b)(i) CDA 22.3.1(b)(i) CDA 22.3.1(b)(x) and 25.5
	● implementation of Project Schedule ● temporary and permanent environmental measures ● implementation of construction safety control plan ● submissions by Developer of construction plans and processes ● implementation of Developer's construction plans and processes ● interim, revised, and Final Design Documents ● Safety Compliance and the performance of Safety Compliance Orders	Technical Provisions, Section 2.1.1 CDA 22.3.1(b)(i) CDA 22.3.1(b)(i) CDA 8.1.1 and 22.3.1(b)(i) CDA 22.3.1(b)(i) CDA 22.3.1(b)(i) CDA 22.3.1(b)(i) and 25.5
	Describe procedures to perform annual design and construction safety Audits, with particular regard to whether: ● Qualified personnel are being used ● safety control processes are in place ● safety control plans are in place ● Record keeping is adequate to document control processes and compliance with TxDOT standards and Developer's safety plan	CDA 22.3.1(b)(x) and 25.5
	Describe procedures to perform compliance Audits on implementation of contract	CDA 22.3.1(b)(i)

No.	Duty	Reference
	requirements, including insurance, contracting and labor practices, etc.	
	Describe procedures to perform compliance Audits on books and records of key contractors	CDA 22.3.1(b)(ix)
	Describe procedures to update the initial submittal list, attached in Table 2 of Attachment C to the Master Agreement	CDA 8.1.1 and 22.3.1(b)(v)
	Describe procedures to review and comment on items flagged with an "R" in Table 2 of Attachment C to the Master Agreement	CDA 8.1.1 and 22.3.1(b)(v)
	Describe procedures to report systemic problems	CDA 22.3.1(b)(iv)
	Describe procedures to notify TxDOT of breaches or failures, applicable Cure Period and recommendation and rationale regarding assessment of Noncompliance Points	CDA 22.3.1(b)(xiv) and Article 28
	Describe procedures for recommendation and rationale regarding assessment of Noncompliance Points	CDA 22.3.1(b)(xiv) and Article 28
	Describe procedures to verify and certify completion of Developer cure, including description of cure and modifications to the Project Management Plan to prevent recurrence	CDA 22.3.1(b)(xiv) and Article 28

EXHIBIT 3

Independent Engineer Services and TxDOT/Developer Payment Responsibility

Duty	Description	Payment Responsibility
Baseline Services	Duties to be performed regardless of the occurrence of any contractual event, for example the duty to Audit Developer during the performance of the design at a specified baseline frequency and to report the results.	50/50 each (see Section 4.1.1)
Contingent Services	Duties that are contingent on specific events described in the CDA Documents such as the duty to prepare a report in the event of a change order or a relief event. These duties are to be performed on joint instruction by TxDOT and Developer pursuant to a Work Authorization.	50/50 each (see Section 4.1.2)
Additional Services	These may consist of: (a) Baseline Services for which the Independent Engineer is instructed by Work Authorization to increase the frequency of performance over and above the frequency described in the IE QAP (b) Additional reporting duties, for example review and comment on documents that are not within the scope of the Baseline Services	See Section 4.1.3

EXHIBIT 4

CDA Submittals

Developer Submittal to TxDOT and the Independent Engineer	Duty	Review Period	Reference
Tolls			
Permission for non-paid use of Project	X		
Developer's toll rate schedule	X		
Written notice of intention to change toll rates or User Classification	X		
Financing			
Initial Funding Agreements and Initial Security Documents			
Re-financing	X		
Provision of draft and final Funding Agreements	X		
Conditioning of approval of refinancing	X		
Project Planning and Approvals			
Submittal of an application to a Government Entity	A		
Design, Acquisition and Construction			
Deviation from Technical Provisions or TxDOT Standards	A		
Operations and Maintenance			
Deviations from Technical Provisions or TxDOT Standards	A		
Renewal Works Schedule	R		
Arrangements for Renewal Works Reserve	R		
Management Systems and Oversight			
Relevant part of plan before commencement of Work	R		
Changes or additions to plan	R		
Referenced materials within plan	R		
Contracting and Labor Practices			
Termination or change of a Key Contractor	A		
Change in Key Personnel	R		
Technical Provisions			
Final Design documents signed and sealed by PE	R		
Project Management Plan			
Initial Submittal (except pre-execution deliverables)	R		
Management Plan (MP) Amendment	R		
Internal Audits by Developer under MP	R		
Non-Conformance and corrective action reports	R		
Project Schedule			
Baseline Schedule First Issue	X		
Baseline Schedule Amendment	R		
Status Schedule Update (Monthly)	R		
Recovery Schedule	R		
Work Breakdown Structure	X		
Reporting Requirements			
Developer Monthly Report	R		
Developer Quarterly Report	R		
Developer Annual Report	R		
Developer Financial Reports	A		

Developer Submittal to TxDOT and the Independent Engineer	Duty	Review Period	Reference
Publicity			
Minutes of Public Relations meetings	A		
Correspondence to/from public	A		
Proposals for Public Meetings	A		
Information provided to TxDOT in Emergency	A		
Information provided to TxDOT in respect of Lane Closures	R		
Updated database of Customer Groups	A		
Environmental Compliance			
Environmental Approvals	A		
Section 404, CWA, permit	A		
Water Quality Certification (concurrently with the USACE Nationwide Permit)	A		
Authorization from the SHPO in accordance with the ACT for previously unknown cultural resource sites	A		
Application revisions, supplements, as necessary to secure or amend previously issued Environmental Approvals which become invalid or need amending due to design changes.	A		
Applications to Regulatory Agencies	A		
Submittal to the appropriate regulatory agencies	A		
Hazardous Materials Management Plan	R		
Corrective action proposed to remediate a hazardous material	A		
Hazardous materials reports	A		
Antiquities Permit Application	A		
Right of Way			
Appraisals, legal descriptions, acquisition documentation, purchase price, requests to acquire Final ROW, condemnation-related activities and funding/closing procedures.	X		
Condemnation action through the "Declaration of Taking" procedure	X		
All specific reports and supporting documentation for review and approval during the acquisition process	X		
Form and substance of title policies	X		
Initial property owner contact letters	X		
ROW acquisition packages	X		
Consent to lease a property from a property owner	X		
Option to extend a tenant's lease	X		
Transfer of title of improvements within acquired Project ROW	X		
Approval for delegation of State's approval processes for ROW	X		
Determination of whether land plan services shall be used by Developer	X		
Utilities			
Exceptions to the UAR	X		
MUAA Documents	A		
Waiver of relinquishment of Existing Utility Property	X		
Waiver of need for a Quitclaim Deed for each Existing Utility Property	X		
Exceptions to Quitclaim Deed standard	X		

Developer Submittal to TxDOT and the Independent Engineer	Duty	Review Period	Reference
Deviation from standard form of Utility Joint Use	X		
Waiver of requirement for PE to sign and seal a Utility Adjustment Plan	X		
Waiver of TxDOT's approval requirement for an applicable Utility Assembly	X		
Commencement by Developer of a Utility Adjustment until all the conditions are met	A		

R The Independent Engineer is required to review and comment on the submittal within the period stated in accordance with the Review Procedure.

A The Independent Engineer is required to receive a copy of the submittal but is required to review and comment only on instruction by TxDOT or Developer. On receipt of the relevant instruction this is an Additional Duty.

X The Independent Engineer receives only a copy of the transmittal and is not required to review and comment, but is required to track the number of submittals and TxDOT's responses and report thereon.

EXHIBIT 5

Form of Billing Statement

EXHIBIT 6

Disadvantaged Business Enterprise (DBE) for Federal-Aid Professional or Technical Services Contracts

1) **PURPOSE.** The purpose of this attachment 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 minority or socially and economically disadvantaged individuals can compete fairly for DOT assisted contracts.

2) **POLICY.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, Subpart A and the Department's Disadvantaged Business Enterprise Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, and the Department's Disadvantaged Business Enterprise Program, apply to this contract as follows.

   a. The Provider will offer Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, Subpart A and the Department's Disadvantaged Business Enterprise Program, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds. In this regard, the Provider shall make a good faith effort to meet the Disadvantaged Business Enterprise goal for this contract.

   b. The Provider and any subprovider(s) shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. The requirements of this Special Provision shall be physically included in any subcontract.

   c. When submitting the contract for execution by the Department, the Provider must complete and furnish Form H-1 which lists the commitments made to certified DBE subprovider(s) that are to meet the contract goal and Form H-2 which is a commitment agreement(s) containing the original signatures of the Provider and the proposed DBE(s). For Work Authorization Contracts, Form H-1 is required at the time of submitting the contract for execution by the Department. Form H-2 will be required to be completed and attached with each work authorization number that is submitted for execution, if the DBE will be performing work**.** Any substitutions or changes to the DBE subcontract amount shall be subject to approval by the Department.

   d. Failure to carry out the requirements set forth above shall constitute a material breach of this contract and may result; in termination of the contract by the Department; in a deduction of the amount of DBE goal not accomplished by DBEs from the money due or to become due to the Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies as the Department deems appropriate.

3) **DEFINITIONS.**

   a. "Department" means the Texas Department of Transportation (TxDOT).

b. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Provider which is paid for in whole or in part with U. S. Department of Transportation (DOT) financial assistance.

c. "Provider" is any individual or company that provides professional or technical services.

d. "DBE Joint Venture" means an association 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 (DBE)" means a firm certified as such by the Department 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. "Race neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

4) **PERCENTAGE GOAL.** The goal for Disadvantaged Business Enterprise (DBE) participation in the work to be performed under this contract is 7% of the contract amount.

5) **PROVIDER'S RESPONSIBILITIES.** A DBE prime may receive credit toward the DBE goal for work performed by his-her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported to the Department.

a. A Provider who cannot meet the contract goal, in whole or in part, shall document the "Good Faith Efforts" taken to obtain DBE participation. The following is a list of the types of actions 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 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 Provider 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 by making a portion of the work available to DBE subproviders and suppliers and selecting those portions of the work or material needs consistent with the available DBE subproviders and suppliers.

(5) The ability or desire of the Provider to perform the work of a contract with its own organization does not relieve the Provider's responsibility to make a good faith effort. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a Provider's failure to meet the contract DBE goal, as long as such costs are reasonable. Providers 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.

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

(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 Director of the Business Opportunity Programs Section of the Department's Construction Division determines that the Provider has failed to meet the good faith effort requirements, the Provider will be given an opportunity for reconsideration by the Director of the appropriate Division.

NOTE: The Provider must not cause or allow subproviders to bid their services.

b. The preceding information shall be submitted directly to the Chair of the Consultant Selection Team responsible for the project.

c. The Provider shall make all reasonable efforts to honor commitments to DBE subproviders named in the commitment submitted under Section 2(c) of this attachment. Where the Provider terminates or removes a DBE subprovider named in the initial commitment, the Provider must demonstrate on a case-by-case basis to the satisfaction of the department that the originally designated DBE was not able or willing to perform.

d. The Provider shall make a good faith effort to replace a DBE subprovider that is unable or unwilling to perform successfully with another DBE, to the extent needed to meet the contract goal. The Provider shall submit a completed Form H-2 for the substitute firm(s). Any substitution of DBEs shall be subject to approval by the Department. The

Department may request a statement from the firm being replaced concerning its replacement prior to approving the substitution.

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

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

6) **ELIGIBILITY OF DBEs.**

a. The Department certifies the eligibility of DBEs, DBE joint ventures and DBE truck-owner operators to perform DBE subcontract work on DOT financially assisted contracts.

b. This certification will be accomplished through the use of the appropriate certification schedule contained in this Department's DBE program.

c. The Department publishes annually a Directory of Disadvantaged Business Enterprises containing the names of firms that have been certified to be eligible to participate as DBEs on DOT financially assisted contracts. The directory is available from the Department's Construction Division, Business Opportunity Programs Section. A monthly update of the Directory can be found on the Internet at www.dot.state.tx.us/insdtdot/orgchart/cmd/cserve/dbelst/.

d. Only DBE firms certified at the time the contract is signed or at the time the commitments are submitted are eligible to be used in the information furnished by the Provider as required under Section 2.c. and 5.d. above. For purposes of the DBE goal on this contract, DBEs will only be allowed to perform work in the categories of work for which they were certified.

7) **DETERMINATION OF DBE PARTICIPATION.**

A firm must be an eligible DBE and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her 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 subprovider is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

A DBE subprovider may subcontract no more than 70% of a federal aid contract. The DBE subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the DBE; and equipment owned or rented directly by the DBE. DBE subproviders must perform a commercially useful function required in the contract in order for payments to be credited toward meeting the contract goal. A DBE performs a commercially useful function when it is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, 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 . When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

A Provider 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.

Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department.

8) **RECORDS AND REPORTS.**

a. After submission of the initial commitment reported (Form H-1), required by Section 2.c. of this attachment, the Provider shall submit Monthly Progress Assessment Reports (Form H-3), after contract work begins, on DBE involvement to meet the goal and for race-neutral participation. One copy of each report is to be sent to the Construction Division, Business Opportunity Programs Section, and one copy is to be submitted with the Provider's invoice. Only actual payments made to subproviders are to be reported. These reports will be required until all DBE subprovider activity is completed. The Department may verify the amounts being reported as paid to DBEs by requesting copies of canceled checks paid to DBEs on a random basis.

b. DBE subproviders should be identified on the report by name, type of work being performed, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount. These reports will be due within fifteen days after the end of a calendar month. Reports are required even when no DBE activity has occurred in a billing period.

c. All such records must be retained for a period of four years following final payment or until any investigation, audit, examination, or other review undertaken during the four years is completed, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the U.S. Department of Transportation.

d. Prior to receiving final payment, the Provider shall submit a Final Report (Form H-4), detailing the DBE payments. The Final Report is to be sent to the Construction Division, Business Opportunity Programs Section and one copy to be submitted with the Provider's final invoice. If the DBE goal requirement is not met documentation of the good faith efforts made to meet the goal must be submitted with the Final Report.

9) **COMPLIANCE OF PROVIDER.** To ensure that DBE requirements of this U.S. DOT-assisted contract are complied with, the Department will monitor the Provider's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of Monthly Progress Assessment Reports (Form H-3), submitted to the Construction Division, Business Opportunity Programs Section by the Provider indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted by the Department.

The Provider shall receive credit toward the DBE goal based on actual payments to the DBE subproviders with the following exceptions and only if the arrangement is consistent with standard industry practice. The Provider shall contact the Department if he/she withholds or reduces payment to any DBE subprovider.

a. A DBE firm is paid but does not assume contractual responsibility for performing the service;

b. A DBE firm does not perform a commercially useful function;

c. Payment is made to a DBE that cannot be linked by an invoice or canceled check to the contract under which credit is claimed;

d. Payment is made to a broker or a firm with a brokering-type operation;

e. Partial credit is allowed, in the amount of the fee or commission provided the fee or commission does not exceed that customarily allowed for similar services, for a bona fide service, such as professional, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.

A Provider'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 Provider, not as a penalty but as liquidated damages to the Department; or such other remedy or remedies as the Department deems appropriate.

	FORM H-1	Form Exhibit H-1 (8/2006) (GSD-EPC)

Texas Department of Transportation
Subprovider Monitoring System
Commitment Worksheet

Contract No.:	☐	Assigned Goal:		% Federally Funded	☐	State Funded	☐

Prime Provider:		Total Contract Amount:	

Prime Provider Info: DBE ☐ HUB ☐ Both ☐

Vendor ID No.:		Expiration Date:	

(First 11 Digits Only)

If no subproviders are used on this contract, please indicate by placing "N/A" on the 1st line under Subproviders.

Subprovider(s) (List All)	**Type of Work**	**Vendor ID No.** (First 11 Digits Only)	**D=DBE H=HUB**	**Expiration Date**	**$ Amount or % of Work ***
Subprovider(s) Contract or % of Work* Totals					

For Work Authorization Contracts, indicate the % of work to be performed by each subprovider.

Total DBE or HUB Commitment Dollars $		
Total DBE or HUB Commitment Percentages of Contract		%

(Commitment Dollars and Percentages are for Subproviders only

	FORM H-2 **Texas Department of Transportation**	Form Exhibit H-2 (8/2006) (GSD-EPC)

Subprovider Monitoring System Commitment Agreement

This commitment agreement is subject to the award and receipt of a signed contract from the Texas Department of Transportation (TxDOT). ***NOTE: Exhibit H-2 is required to be attached to each contract that does not include work authorizations. Exhibit H-2 is required to be attached with each work authorization. Exhibit H-2 is also required to be attached to each supplemental work authorization. If DBE/HUB Subproviders are used, the form must be completed and signed. If no DBE/HUB Subproviders are used, indicate with "N/A" on this line: ___ and attach with the work authorization or supplemental work authorization.***

Contract #:		Assigned Goal:		% Prime Provider	
Work Authorization (WA) #:		Work Authorization Amount:		Date:	
Supplemental Work Authorization (SWA) #:		To WA #:		SWA Amount:	
Revised WA Amount:					

Description of Work *(List by category of work or task description. Attach additional pages, if necessary.)*	**Dollar Amount** *(For each category of work or task description shown.)*
	$
	$
	$
	$
	$
Total Commitment Amount *(Including all additional pages.)*	$ 0.00

IMPORTANT: The signatures of the prime and the DBE/HUB and Second Tier Subprovider, if any (both DBE and Non-DBE) and the total commitment amount must always be on the same page.

Provider Name: Address: **Phone # & Fax #: E-mail:**	**Name:**_____ ***(Please Print)*** **Title:**_____ _____ **Signature** **Date**
DBE/HUB Sub Provider Subprovider Name: VID #: **Address: Phone # & Fax #: E-mail:**	**Name:**_____ ***(Please Print)*** **Title:**_____ _____ **Signature** **Date**

Second Tier Sub Provider **Subprovider Name:** **VID #:** **Address:** **Phone # & Fax #:** **E-mail:**	**Name:**_____ ***(Please Print)*** **Title:**_____ _____ **Signature** **Date**
VID # is the Vendor Identification Number issued by the Comptroller. If a firm does not have a VID #, please enter the owner's Social Security or their Federal Employee Identification Number (if incorporated).	

	FORM H-3 **Texas Department of Transportation Subprovider Monitoring System**	Form Exhibit H-3 (8/2006) (GSD-EPC)
	PROGRESS ASSESSMENT REPORT FOR MONTH OF (MO./YR.)	/

Contract #:		•	Original Contract Amount:
Date of Execution:		•	Approved Supplemental Agreements:
Prime Provider:		•	Total Contract Amount:
Work Authorization No.:		•	Work Authorization Amount:

If no subproviders are used on this contract, please indicate by placing "N/A" on the 1st line under Subprovider.

DBE	All Subproviders	Category of Work	Total Subprovider Amount	% Total Contract Amount	Amount Paid This Period	Amount Paid To Date	Subcontract Balance Remaining
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$
☐			$		$	$	$

Fill out Progress Assessment Report with each estimate submitted, *for all subcontracts*, and forward as follows:

1 Copy with Invoice - Contract Manager/Managing Office

1 Copy – TxDOT, BOP Office, 125 E. 11th, Austin, TX 78701, 512-486-5500, toll free 866-480-2518, or Fax to 512-486-5519

I hereby certify that the above is a true and correct statement of the amounts paid to the firms listed above.

Print Name - Company Official /DBE/HUB Liaison Officer

Signature

Date

E-mail

Phone

Fax

	FORM H-4 Texas Department of Transportation Subprovider Monitoring System	Form Exhibit H-4 (8/2006) (GSD-EPC)

Final Report

The Final Report Form should be filled out by the Prime Provider and submitted to the Contract Manager and the Business Opportunity Programs Office for review upon completion of the contract. The report should reflect **all subcontract activity** on the project. The report will aid in expediting the final estimate for payment. If the HUB or DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

DBE Goal:		%	**OR**	HUB Goal:		%

Total Contract Amount:		Total Contract Amount: $	

Vendor ID Number	Subprovider	Total Amount Paid (Final)
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
	TOTAL	$ 0.00

This is to certify that		% of the work was completed by the HUB or DBE subproviders as stated above.

	By: Prime Provider
	Per: Signature

Subscribed and sworn to before me, this		day of		, 20	
	Notary Public		County		

My Commission expires:	

	FORM H-5	Form Exhibit H-5 (8/2006) (GSD-EPC)

ARTICLE 1FEDERAL SUBPROVIDER AND SUPPLIER INFORMATION

The Prime Provider shall indicate below the name, address and phone number of all successful and unsuccessful subproviders and/or suppliers that provided proposals/quotes for this contract prior to execution. You may reproduce this form if additional space is needed.

0	Address	Phone Number

The information must be provided and returned with the contract.

Signature		Date		
Printed Name		E-mail		Phone Number

EXHIBIT 7

Identification of Project Manager and Key Personnel

Project Manager Key

Personnel

EXHIBIT 8

Arbitration

Any arbitration brought under the terms of this Agreement shall be conducted in the following manner:

1. Developer and the Independent Engineer may agree on one arbitrator, but in the event that they cannot so agree, there shall be three arbitrators, one named in writing by each of Developer and the Independent Engineer within 15 days after demand for arbitration is made by either Developer or the Independent Engineer, and a third to be chosen by the two so named within ten days after they are named. Should either Developer or the Independent Engineer fail to timely join in the appointment of the arbitrator(s), the arbitrator(s) shall be appointed in accordance with the provisions of Texas Civil Practice and Remedies Code Section 171.041.

2. Developer and the Independent Engineer shall be entitled to conduct reasonable discovery in preparation for arbitration hearings. On application of either Developer or the Independent Engineer, the arbitrator(s) may issue orders and set time limits concerning the conduct of discovery and responses to discovery requests. Developer and the Independent Engineer express their mutual interest in full and fair discovery consistent with obtaining timely final resolution of disputes. The arbitrator(s) shall issue orders and set time limits regarding discovery so as to carry out such mutual interest.

3. Arbitration hearings conducted under the terms of this Agreement shall be at the time and place within Travis County, Texas selected by the arbitrator(s). Notice of hearing shall be given and the hearing conducted in accordance with the provisions of Section 171.044 et seq. of the Texas Civil Practice and Remedies Code.

4. At the hearing, any relevant evidence may be presented by either Developer or the Independent Engineer, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the discretion of the arbitrator(s), who shall balance Developer's and the Independent Engineer's mutual interest in receiving a full and fair hearing with Developer's and the Independent Engineer's interest in obtaining timely final resolution of disputes.

5. The arbitrator(s) shall hear and determine the matter expeditiously. The arbitrator(s) shall execute, acknowledge and deliver to Developer and the Independent Engineer a written decision and, if applicable, award, not later than 30 days after closing of the hearing. Delivery shall be made by registered or certified mail.

6. In deciding on the dispute in arbitration, the arbitrator(s) shall apply the applicable Laws, including judicial precedent, and the terms of this Agreement. The arbitrator shall have authority to grant legal and equitable relief, including interlocutory orders.

7. The costs and expenses of arbitration**,** including the fees of the arbitrator(s), shall be borne by the losing party or in such proportions as the arbitrator(s) shall determine. The prevailing party shall be entitled to recover its attorneys' and expert witness fees and costs from the losing party, in such amount as the arbitrator(s) determine is reasonable.

If there is only one arbitrator, his or her decision shall be binding and conclusive on Developer and the Independent Engineer. If there are three arbitrators, the decision of any two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of their decision shall be a condition precedent to any right of legal action on the dispute. A judgment confirming the award or other relief granted by the arbitrator(s) may be entered by any court having jurisdiction; or the court may

vacate, modify, or correct the award in accordance with the provisions of the Texas General Arbitration Act (Texas Civil Practice and Remedies Code Section 171.087 et seq.).

EXHIBIT H-2

LIST OF PRE-QUALIFIED INDEPENDENT ENGINEERS

The following entities are pre-qualified to provide Independent Engineer services on the Project. They are listed in order of assignment by TxDOT.

(1) HDR, Inc
(2) Jacobs Engineering Group, Inc;
(3) SAM-CS Inc;
(4) H.W. Lochner, Inc; and
(5) Raba-Kistner Consultants, Inc

EXHIBIT I

MINUTE ORDER

See Attached