Exhibit A

DEFINITIONS AND ACRONYMS

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

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

"ATC Cost Adjustment" means the amount of the estimated increase in TxDOT's costs resulting from implementation of an approved ATC, as determined as described in ITP Section 3.3.

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

"Base Scope Design-Build Price" shall be the price for the work required under the DBC with respect to the Proposer's base scope as described in Section 3.1 of Exhibit C to the ITP.

"Business Day" means days on which TxDOT is officially open for business.

"Code" has the meaning set forth in ITP Section 1.7.4.

"Commission" means the Texas Transportation Commission.

"Day" or "day" shall mean calendar days unless otherwise expressly specified.

"DBC Documents" has the meaning set forth in Section 1.2 of the Design-Build Contract.

"Design-Build Contract" or **"DBC"** means the design-build contract for the design and construction of the Project, as further set for the in Volume II of the RFP.

"Design-Build Contractor" has the meaning set forth in ITP Section 1.1.

"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 5.1.

"Disadvantaged Business Enterprise" or **"DBE"** has the meaning set forth in 49 CFR Part 26.

"Equity Member" means (a) each entity with a direct interest in the Proposer (whether as a member, partner, joint venture member or otherwise), (b) each entity proposed to have a direct interest in Design-Build Contractor (whether as a member, partner, joint venture member or otherwise), and (c) each entity that will have an indirect interest in the Proposer or Design-Build Contractor through one or more intermediaries. Notwithstanding the foregoing, if the Proposer is a publicly traded company,

shareholders with less than a 10% interest in the 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 5.1.

"FHWA" means the Federal Highway Administration.

"Financial Proposal" means the financial information included in a Proposal submitted by a Proposer providing the information requested in Exhibit C of the ITP.

"Financial Proposal Evaluation Subcommittee" or **"FPES"** means the subcommittee that performs the initial review of the Financial Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.1.

"Instructions to Proposers" or **"ITP"** means the documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

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

"Key Subcontractor" means any subcontractor that will (a) fill any of the following key project roles: project management, lead design firm, quality control management, and quality assurance management or (b) serve as a key task leader for geotechnical, hydraulics and hydrology, structural, environmental, utility or right-of-way issues. See Form D.

"Location" has the meaning set forth in ITP Section 1.3.1.

"Major Participant" means each Equity Member and each member of the Proposer's organization with: (a) primary responsibility for design; (b) primary responsibility for construction; or (c) a proposed subcontract with a value greater than or equal to $5 million (excluding subcontracts with Suppliers).

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

"Post-Selection Deliverables" has the meaning set forth in ITP Section 5.12.

"Preliminary Project Baseline Schedule" means the Project schedule required to be submitted with the Proposal and meeting the requirements set forth in Section 4.1.3 of Exhibit B to the ITP.

"Pre-Proposal Submittal" has the meaning set forth in ITP Section 2.4.

"Project" means the Energy Sector Roadway Repair Project, as described in ITP Section 1.3.

"Project Development Plan" means the plan submitted with the Technical Proposal providing the information requested in Section 4.0 of Exhibit B to the ITP.

"Project Management Plan" means the portion of the Project Development Plan providing the information requested in Section 4.2 of Exhibit B to the ITP.

"Project Webpage" has the meaning set forth in the RFQ.

"Proposal" means the original documents submitted by a Proposer in response to the RFP.

"Proposal Due Date" means the deadline (date and time) for submission of Proposals identified in ITP Section 1.6.

"Proposal Revisions" have the meaning set forth in ITP Section 5.6.

"Proposal Security" means the proposal bond 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.

"Quality Management Plan" means the portion of the Project Development Plan providing the information requested in Section 4.3 of Exhibit B to the ITP.

"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 August 2, 2013, as amended.

"Request for Proposals" or **"RFP"** means the set of documents identifying the Project and the work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/DB Contractor. The RFP includes the ITP, DBC Documents and Reference Information Documents.

"RFP Webpage" means the secure file transfer and sharing site for the Project as set forth in ITP Section 2.2.

"Stakeholder" means parties that may have a stake in the Project by virtue of their location or funding, including each county, city or municipality in which the Locations are

situated, United States Department of Transportation/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, 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.

"Surety" means the individual or entity committing to provide any of the bonds identified in the RFP.

"Technical Proposal" means the technical proposal submitted by a Proposer providing the information requested in Exhibit B of the ITP.

"Technical Solutions" means the portion of the Project Development Plan providing the information requested in Section 4.1 of Exhibit B of the ITP.

"Total Scope Design-Build Price" shall be the price for the work required under the DBC with respect to all Locations as described in Section 3.1 of Exhibit C to the ITP.

"USDOT" means the United States Department of Transportation.

For definitions of other initially capitalized terms, please refer to the DBC Documents.

Exhibit B

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit B describes the submission format for Technical Proposals and outlines the required information that will comprise a Technical Proposal for the DBC.

Proposer shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms on behalf of each Major Participant. Item B of the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories for Major Participants.

2.0 Format

The Technical Proposal shall be limited to an aggregate of 30 pages (if double-sided, 15 sheets), plus the executive summary, required forms, resumes and appendices containing graphs, matrices, schedules, drawings and other pertinent data.

3.0 Contents of the Technical Proposal

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. 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.

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 and P through S,);

(c) Proposal Security;

(d) Project Development Plan; and

(e) Appendices.

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 Proposer's ability to satisfy the financial and technical requirements of the Project. The Executive Summary shall not exceed five pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

(a) A summary of any changes to Proposer's QS including changes in Proposer's organization, Equity Members, other Major Participants and Key Personnel since submission of the QS.

(b) A summary of 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 relevant Key Personnel.

(c) A summary of the Project Development Plan including:

- A summary of the Technical Solutions,
- A summary of the Project Management Plan, and
- A summary of the Quality Management Plan

(d) A summary of the Proposer's approach to satisfying the DBE requirements.

3.2 Proposer Information, Certifications and Documents

3.2.1 Proposal Letter

The Proposal shall include the Proposal Letter (Form A). Proposer shall attach to the Proposal Letter the documents and information described in the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A; provided, however, that Proposer may attach to the original Form A an envelope including four certified copies of the required organizational documents in lieu of providing organizational documents with each of the copies of the Proposal.

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 the organization, licensing information, and description of work (if applicable) for Proposer and 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); (ii) each firm that will provide engineering, architectural, surveying, quality assurance and/or other professional services for development of the Project valued at $500,000 or more ("Major Professional Services Firm"); 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 DBC, the successful Proposer must provide evidence that it and its Major Participants hold all necessary licenses and professional registrations.

The Proposal shall include copies of organizational documentation described in the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A for Proposer, DB Contractor and Equity Members, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or, if Proposer intends to form an affiliated entity to be the DB Contractor, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A) for such proposed entity.

3.2.3 Responsible Proposer Questionnaire

The Proposal shall include Form C, the "Responsible Proposer Questionnaire", signed by Proposer, each Major Participant and any other team member identified in the Proposal. As noted on the form, it may be provided by Proposer on its own behalf and on behalf of the DB Contractor 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 shall include evidence of signature authorization for such individual.

3.2.4 Key Subcontractors

The Proposal shall include a list in the form of Form D of the names of all Key Subcontractors that Proposer intends to use to complete the Work under the DBC.

3.2.5 Key Personnel

3.2.5.1 Designation of Key Personnel Prior to Proposal Due Date

Each Proposer shall submit any proposed changes in Key Personnel from those identified in the QS and any new Key Personnel that were not required to be submitted with the QS falling within any of the categories identified in Section 3.2.5.2. Proposer may not make any changes in its Key Personnel after receipt of TxDOT approval,

except as provided in the DBC Documents. The Proposal may not include any Key Personnel previously disapproved by TxDOT in writing.

3.2.5.2 Information Regarding Key Personnel in Proposal

The Proposal shall identify the pre-approved Key Personnel and shall include Form E identifying personnel work assignments. Refer to the DBC Documents for information regarding time commitment requirements for Key Personnel and TxDOT's 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 individuals with direct responsibility for each of the following categories of work are considered Key Personnel:

(a) overall management of the Project (*Project Manager*);

(b) design of the Project and design quality assurance and review of quality control measures in accordance with the DQMP (as described in the Technical Provisions) (*Design Manager*);

(c) construction, coordination of subcontractors and scheduling (*Construction Manager*);

(d) control of quality, and the implementation and operation of the Construction Quality Management Plan (CQMP) (*Construction Quality Control Manager (CQCM)* as described in the Technical Provisions);

(e) independent quality acceptance for construction and review of quality control measures in accordance with the CQMP and environmental compliance (*Construction Quality Acceptance Manager (CQAM)* as described in [the Technical Provisions); and

(f) safety compliance (*Safety Manager*).

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

The Proposal shall include a copy of any approval letter(s) issued by TxDOT approving changes in 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 of such changes.

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) confirming that Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to substantiate its attempts to meet the goal.

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 Organizational Conflict of Interest Disclosure

Attention is directed to TxDOT's rules on conflicts of interest, which are set forth at 43 Texas Administrative Code §9.155. 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 N, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

3.2.13 Certification Regarding Use of Contract Funds For Lobbying

The Proposal shall include Form O, executed by the Proposer, all members or joint venturers of the Proposer and all of other Major Participants including Equity Members certifying that no federal appropriated funds have been or will be paid for lobbying activities and no other funds have been paid or will be paid to influence governmental decisions regarding this Project.

3.2.14 Certification Regarding Ineligible Contractors

The Proposal shall include Form P, certifying that Proposer and its Subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended or ineligible from doing transactions with the Federal Government or any of its agencies and making other certifications as described on Form P.

3.2.15 Guarantor Letter

The Proposal shall include (if a guaranty is required): (a) an irrevocable letter signed by the Guarantor(s) in the form of Form Q committing to provide a guaranty in the form of

Exhibit 13 of the DBC, concurrently with execution and delivery of the DBC Documents by Proposer; (b) evidence of authorization of the signatory to that letter; (c) Form B-1 for the Guarantor(s); (d) financial information described in Section 2.0 of Exhibit C; and (e) such other information concerning the Guarantor(s) as TxDOT may request. A guaranty of DB Contractor's obligations under the DBC is required under the following circumstances: (i) Proposer identified a Guarantor in its QS or was advised by TxDOT that a guaranty would be required as a condition to the shortlisting of Proposer, (ii) DB Contractor is a newly formed entity (i.e., the entity has been in existence for one year or less), (iii) the combined Tangible Net Worth of DB Contractor and its Equity Members is less than $35,000,000; or (iv) the form of organization of Proposer and/or the financially responsible parties comprising Proposer changes and TxDOT determines, in its sole discretion, to require a Guarantor as a condition to approving such change under ITP Section 2.11. If a guaranty is required, the combined Tangible Net Worth of the guarantor, Proposer and its Equity Members must be at least $35,000,000. Tangible Net Worth shall be determined based on audited financial statements for the fiscal year most recently ended.

3.2.16 Surety Information

The Proposal shall include the following information regarding the Surety for the bonds to be provided in accordance with Section 8 of the DBC:

(a) Name of bonding company (must be 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) and the name and address of the agent.

(b) Whether or not the listed bonding company defaulted on any obligation within the past ten years, and the details in the event of such default.

Each Proposer shall confirm that the Proposer team is capable of obtaining a Performance Bond ***and*** a Payment Bond, each in an amount of at least $150 million. The Proposal shall include a letter from a surety/insurance company indicating that such capacity exists for Proposer or the Equity Member with the primary responsibility for construction. Letters indicating "unlimited" bonding capability are not acceptable. The letter must specifically state that the surety/insurance company has read the RFP, including the DBC Documents, and evaluated Proposer's/Equity Member's backlog, work-in-progress and recently awarded and conditionally awarded contracts as of the date of the letter in determining its bonding capacity. If Proposer or the Equity Member responsible for construction, as applicable, is a joint venture, partnership, limited liability company or other association, separate letters for one or more of the individual Equity Members of Proposer or the Equity Member responsible for construction, as applicable, are acceptable, as is a single letter covering all Equity Members of Proposer.

3.3 Proposal Security

The Proposal shall include a proposal bond as specified below.

3.3.1 Forfeiture of Security

Forfeiture of Proposal Security in accordance with Section 4.5 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 design-build 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.

3.3.2 Form of Proposal Bond

A proposal bond in the amount of $2 million and in the form of Form K shall be provided by 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. The proposal bond shall be subject to forfeiture in accordance with ITP Section 4.5. Each proposal bond will be retained until the DBC Documents have been fully executed, after which the proposal bond for each unsuccessful Proposer, except those proposal bonds which have been forfeited, will be returned to the respective Proposers. The proposal bond for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution and award set forth in ITP Section 6.1. If the next best value Proposer is notified during the 180-day period that it is selected for negotiations, such Proposer shall obtain an extension of the proposal bond for the period until 270 days after the Proposal Due Date.

4.0 Preliminary Project Baseline Schedule

The Proposal shall provide a Preliminary Project Baseline Schedule and narrative and include at least the following:

(a) Narrative which describes the proposed execution of the work for the term of the DBC.

(b) Preliminary Project Baseline Schedule to the levels described in the Technical Provisions for the construction period and for maintenance performed during the construction work in accordance with the Technical Provisions.

(c) The Preliminary Project Baseline Schedule shall show achievement of Substantial Completion of the Project no later than 540 days after NTP1.

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.

5.0 Project Development Plan

Proposer shall submit a Project Development Plan which shall consist of the following three components: the Project Management Plan (Section 5.1), the Technical Solutions (Section 5.2) and the Quality Management Plan (Section 5.3).

The Project Development Plan shall provide the information relevant for the project management philosophy, plan and schedule for executing the Project, including management structure and personnel; and the quality control procedures for any related contract administration, describing how Proposer plans to achieve and satisfy the project requirements, including safety.

5.1 Project Management Plan

The Project Management Plan shall set out a summary of Proposer's management approach to construction, traffic management, maintenance during work, documentation, testing and auditing/reporting for the Project, risk and organizational structure. The minimum information to be provided within the Project Management Plan is detailed in this Section 5.1.

5.1.1 General Project Management

The Project Management Plan shall describe Proposer's overall Project management plan and approach to the work (including design and construction), including at least the following:

(a) A description of the methods to be used to assure necessary communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel and communications between TxDOT and DB-Contractor across multiple Locations.

(b) A description of how Proposer intends to: (i) provide the experienced personnel, facilities and equipment, and to integrate such resources, to complete each aspect of the Project; (ii) control and coordinate the various Subcontractors; (iii) interface with TxDOT, its consultants and relevant federal, State and local agencies; (iv) interface with any applicable Utility

Owners; (v) control Project schedules and minimize Project costs; and (vi) comply with applicable Laws.

(c) A detailed description of how the team members will work together to provide a unified construction, and quality approach to all elements of the Work in respect of the operational life-cycle management.

(d) A description of the 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.

(e) All major training program(s) to ensure that continuous improvement practices are being implemented.

(f) Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants), including the Proposer's or team member's plan for allocating its resources, materials and personnel among the Locations.

5.1.2 Construction and Traffic Management During Construction Period

The Project Management Plan shall provide a description of Proposer's plan and approach for performing construction and traffic management on the Project, including at least the following:

(a) 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.

(b) A description of the intended laydown, recycling, staging, disposal and maintenance locations (with approximate areas) to be used during construction.

(c) 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.

(d) A description of how Proposer will manage and control traffic during construction.

5.1.3 Organizational Structure and Key Personnel Roles

The Project Management Plan shall describe Proposer's overall organizational structure, roles of Key Personnel and other key persons, and team approach to the Work, including at least the following:

(a) An organization chart outlining the basic structure of Proposer's Project organization (including the construction sub-organizations) and a description of the roles, 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 and other identified key persons will fit into the organization, including a description of each such person's function and responsibilities relative to the Project and indicating the percent of time that the person will devote to the Project.

5.1.4 Environmental and Risk Management

The Project Management Plan shall describe the approach to identification, management, mitigation, and allocation of Project-specific risks, including a risk matrix and any environmental issues which shall identify the following at a minimum:

(a) A list of applicable environmental laws, rules and regulations.

(b) A list of environmental permits, permit amendments and other approvals, whether state, federal or local, that will or may be required, together with the name of the issuing agency and a plan for obtaining required permits and permit amendments in a timely manner.

(c) A description of the project-specific environmental issues anticipated to be encountered on the Project, how construction will address the anticipated impacts and be sensitive to the environment, and the approach for managing conflicts.

(d) Significant project-specific risk categories during construction of the Project and maintenance during work.

(e) The potential consequences of the identified risks.

(f) The probability/likelihood of risks.

(g) Risk-mitigation strategies to eliminate or reduce specific risks.

(h) The allocation of responsibility for mitigation of the identified risks between TxDOT and DB Contractor.

(i) Include a description of a TxDOT-DB Contractor communication plan with respect to Project-specific risks.

5.1.5 Safety and Health Plan

The Project Management Plan shall provide a description of Proposer's Project-specific 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 heavy energy sector traffic conditions and the size and scope of the Project.

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

5.1.6 Mentoring and Job Training

The Project Management Plan shall provide a description of Proposer's plan and management approach for mentoring and job training on the Project, including at least the following:

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

1. A description of standard subcontracting methods to effectively manage subcontractor performance as it relates to the Technical Provisions.

2. An outline of areas of Work where DBEs may be utilized.

3. 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 plan to mentor DBEs and small businesses, including:

1. A mentoring program for educational workshops, including the following:

- A description of targeted technical disciplines;
- Identification of specific audiences;
- Development of short and long term plans; and
- Identification of frequency of the workshops;

2. Educational workshops for bonding and insurance requirements.

Note that aspects of this approach will be integrated into Proposer's Job Training and Small Business Opportunity Plan, as approved by TxDOT, which shall be incorporated into the DBC Documents as Exhibit 8 following award of the DBC and shall be subject to TxDOT review, comment and approval.

5.2 Technical Solutions

The Technical Solutions component of the Proposal shall summarize Proposer's approach to implementing the work and shall include associated information, as described in this Section 5.2. The Technical Solutions shall also include information with respect to approved ATCs, perceived added value items and the incorporation of new technologies as follows:

(a) Specifically, for all ATCs, Proposer shall:

- Specifically state whether any approved ATCs are included in the Proposal, with reference to the ATC identification number assigned by TxDOT; and
- Describe how the ATC is used and provide cross-references to other elements of the Proposal that are affected by the ATC.

(b) For perceived value-added components of the Proposal, Proposer shall:

- Specifically identify characteristics of its Proposal which Proposer considers to improve upon the Project's technical requirements, as set forth in the DBC Documents, and which bring additional benefits and/or value to TxDOT and the public and the energy sector; and

- Provide a narrative description of the value of such benefits.

5.2.1 Construction Staging, Sequencing, Maintenance and Traffic Management

The Proposal shall provide a description of the construction staging, sequencing, maintenance during construction and traffic control to maintain traffic during construction. The information shall include at least the following:

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

(b) Concept drawings or description of the proposed construction staging and steps that will be taken to minimize disruptions to the traveling public and impacts on the Stakeholders and communities and approach to account for heavy energy sector traffic conditions.

(c) A description of how maintenance will be addressed through the various staging and sequencing.

(d) A description of how the right-of-way and adjacent roads and properties will be maintained, including roadway pavement structures, and how business and residential access will be maintained throughout the Project corridor during the construction, and how construction will address anticipated environmental commitments, including the intended measures to be used to mitigate and minimize dust, erosion/run-off and local road damage.

(e) A description of how Proposer will coordinate its construction work with other project that are expected to be under construction during the work.

5.2.2 Maintenance of Locations During Construction Work

The Proposal shall provide a description of the maintenance work during construction required for the Project. The information, at a minimum, shall include the Proposer's approach to accomplish the following:

(a) Maintenance of a Location in a manner appropriate for a project of similar character from initial placement of barricades to Substantial Completion of the Location.

(b) Minimizing delay and inconvenience to Users.

(c) Monitoring and observing weather and weather forecasts to proactively deploy resources to minimize delays and safety hazards due to heavy rains, or other severe weather events.

(d) Minimizing the risk of damage, disturbance, or destruction of third-party property during the performance of maintenance activities.

(e) Coordinating with and enabling TxDOT and others with statutory duties or functions in relation to the Project to perform such duties and functions.

(f) Performing systematic project inspections and maintenance in accordance with the provisions of DB Contractor's Maintenance Management Plan and DB Contractor's Safety Plan.

5.2.3 Utilities

The Proposal shall provide a description of the utility work required for the Project. The information shall include at least the following:

(g) The proposed methods of locating additional utilities horizontally and vertically that encroach upon the footprint of the Project, including cross drainage and roadway widenings.

(h) 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.

(i) The proposed methods of traffic control and construction related to utility relocation and protection and efforts to minimize utility conflicts during construction and the approach for managing conflicts.

5.3 Quality Management Plan

The Quality Management Plan shall provide a summary of Proposer's plan and approach to quality management during all stages of the Project through mobilization, construction and maintenance during the work.

5.3.1 Quality Control and Quality Acceptance Procedures

The Quality Management Plan will outline the systems that will be employed to ensure that the Work is executed with minimal requirements for corrective work. The plan shall detail the systems employed to detect noncompliance, correct the consequences of noncompliance and to prevent the reoccurrence of repeat noncompliance. The Quality Management Plan shall include at least the following:

(a) Proposed quality control and quality assurance procedures for construction, including:

1. A description of both the formal and the informal process for design deficiency corrections and change tracking;

2. A description of the approach to acceptance, testing and inspection;

3. Proposed quality management documentation procedures; and

4. The proposed audit regime.

(b) A description of the proposed approach to integrate and implement TxDOT oversight procedures.

(c) A description of how Proposer intends to interface with third parties and other Stakeholders respect to quality control and quality assurance.

(d) A description of Proposer's approach to documenting and curing construction deficiencies and noncompliance issues and ensuring that repeat mistakes are avoided.

5.3.2 Organizational Structure and Key Personnel Roles

The Quality Management Plan shall describe Proposer's overall organizational structure and the roles of Key Personnel and other key persons with respect to quality management and shall include at least the following:

(a) An organization chart showing the quality management structure, along with a staffing plan by position title.

(b) A description of the proposed design and construction quality program organization, including the name and titles of Key Personnel and other identified key persons responsible for quality management and a description of the roles, responsibilities, interrelation and work to be accomplished by each member of the quality management team.

(c) A description of how the quality management staff will be functionally independent so that such individuals will have the authority to effect changes in the event of failure to comply with DBC requirements.

(d) Information describing how each of the Key Personnel and other identified key persons will fit into the quality management structure organization, including a description of each such person's function, responsibilities, qualifications and experience.

5.4 Substantial Completion Date

The Technical Proposal shall indicate the number of calendar days between NTP1 and its proposed Substantial Completion Dates for the Project.

Exhibit C

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C describes the submission format for Financial Proposals and outlines the required information that will comprise the Financial Proposal for the DBC.

Proposer shall submit the information required by this Exhibit C in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.1 Format of Financial Proposal

All price, cost and financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts shall be stated as 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 individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial information are to be included in the Financial Proposal.

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. 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.

2.0 Financial Capacity Information and Substantial Completion Commitments

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

The information required under this Section 2.0 (for Proposer, all Equity Members and any required Guarantors) shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in Proposer's organization (i.e., Equity Member, lead design firm, subcontractor, etc.).

2.1 Prequalified Proposers

If the Proposer submitted with its QS a letter indicating that the Equity Member of the Proposer responsible for construction or Guarantors have been prequalified by TxDOT pursuant to Section 9.12 of Title 43, Texas Administrative Code, the Financial Proposal shall include the following information:

(a) **Prequalification Letter -** If the Proposer submitted with its QS a letter from TxDOT indicating that the Equity Member of the Proposer responsible for construction or Guarantors have been prequalified by TxDOT pursuant to Section 9.12 of Title 43, Texas Administrative Code, a copy of such prequalification letter. If such prequalification is not current through the Proposal Due Date, also include a letter from the relevant entity detailing the current status of such prequalification, including dates required renewal documentation was or is anticipated to be submitted.

(b) **Information About Proposer, Major Participants and Other Subcontractors -** Copies of the completed Form B-1, Form B-2 and Form B-3, in each case in accordance with the requirements of Exhibit B, Section 3.2.2.

(c) **Surety Information -** A copy of the information regarding the Surety as provided in accordance with the requirements of Exhibit B, Section 3.2.16.

(d) **Guarantor Letter of Support** – Copies of one or more guaranties regarding DB Contractor's obligations under the DBC, as such may be required by ITP Exhibit B, Section 3.2.15. If required, the letter from the Guarantor(s) must confirm unequivocally that it will guarantee all the obligations of DB Contractor with respect to the DBC. Proposers are advised that TxDOT may, in its discretion based upon the review of the information provided, specify that an acceptable Guarantor is required as a condition to eligibility for award.

(e) **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 QS and those that are pending. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date as long as the dissemination of such information is permitted by law.

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. 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 fiscal periods between submission of the QS 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.

List of Representative Material Changes

1. 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;

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

3. 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;

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

5. 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;

6. 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

7. 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.

2.2 Other Proposers

If the Proposer did not submit such a prequalification letter with its QS, the Financial Proposal shall include the following information for Proposer, all Equity Members and any required Guarantors:

(a) **Newly Formed Entity** - If Proposer is a newly formed entity (i.e., the entity has been in existence for one year or less) or does not have independent financial statements, financial statements for the Equity Members and any required Guarantors shall be provided (and Proposer shall expressly state that Proposer is a newly formed entity and does not have independent financial statements).

(b) **Information About Proposer, Major Participants and Other Subcontractors -** Copies of the completed Form B-1, Form B-2 and Form B-3, in each case in accordance with the requirements of Exhibit B, Section 3.2.2.

(c) **Surety Information -** A copy of the information regarding the Surety as provided in accordance with the requirements of Exhibit B, Section 3.2.16.

(d) **Guarantor Letter of Support** – Copies of one or more guaranties regarding DB Contractor's obligations under the DBC, as such may be required by ITP Exhibit B, Section 3.2.15. If required, the letter from the Guarantor(s) must confirm unequivocally that it will guarantee all the obligations of DB Contractor with respect to the DBC. Proposers are advised that TxDOT may, in its discretion based upon the review of the information provided, specify that an acceptable Guarantor is required as a condition to eligibility for award.

(e) **Material Changes in Financial Condition -** A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition (as described in Section 2.1(e) above) since submission of the QS and those that are pending. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date as long as the dissemination of such information is permitted by law.

3.0 Price Information

3.1 Design-Build Price and Cash Flow Adjustment Table and Maximum Payment Curve

Using Forms M-1 and M-1.3, Proposer shall indicate how many of the Locations the Proposer commits to complete for a Base Scope Design-Build Price not exceeding $150 million, and in doing so shall start with Location 1 and proceed down the list in order until the Proposer has included the maximum number of Locations that the Proposer is

able to include for $150 million or less. Proposers may not alter the priority order of the Locations when identifying the Proposer's base scope.

Proposer shall submit a Base Scope Design-Build Price and a Total Scope Design-Build Price for the Project using Forms M-1, M-1.1, M-1.2 and M-1.3 setting forth the total price for the work required under the DBC for the Locations included in the Proposer's base scope and for all Locations, respectively. In addition to providing a Total Scope Design-Build Price inclusive of all Locations, for any Locations not included in Proposer's Base Scope Design-Build Price, Proposer shall provide a lump-sum price (inclusive of all design-build costs) for each Location outside of the Proposer's base scope, on a Location-by-Location basis using Form M-1.3. Detail regarding such Location pricing shall be provided using Form M-1.2 for each Location within Proposer's additional scope, with such additional Forms M-1.2 shall be identified as "Form M-1.2A," "Form M-1.2B," etc.

Proposer shall include Form M-1.4, which shall set forth any ATC Cost Adjustments for the Project identified by TxDOT in its ATC approval letters for ATCs that are incorporated into the Proposal. Form M-2 shall set forth the cash flow corresponding to the anticipated draw requests for the work required under the DBC in connection those Location identified as being within Proposer's base scope. Each Form M-3 shall set forth the cash flow corresponding to the anticipated draw requests for the work required under the DBC in connection with each of those Location identified as being within Proposer's additional scope, with such additional Forms M-3 shall be identified as "Form M-3A," "Form M-3B," etc.. The draw requests shall be established by anticipated percentage complete on a monthly basis, and shall be limited to the anticipated cash flow.

3.2 Maximum Payment Prior to NTP2

The maximum payment to DB Contractor prior to NTP2 for Work under the DBC shall not exceed $2 million. For purposes of Forms M-2 and M-3, Proposers should assume that NTP2 will be issued not less than 90 days following the issuance of NTP1.

Exhibit D

REQUIRED FORMS

(See attached)

Exhibit E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Proposal Component	Form (if any)	ITP Section Cross-Reference
Technical Proposal		
Proposers shall follow the order of this checklist in their submissions. A copy of this document, incorporating relevant cross-references to Proposer's Technical Proposal, shall be submitted with the Technical Proposal.		
A. Executive Summary		
Executive Summary **(Exclude price information)**	No forms are provided	Exhibit B, Section 3.1
B. Proposer Information, Certifications & Documents		
Proposal Letter	Form A	Exhibit B, Section 3.2.1
Organizational and Authorization Documents	No forms are provided	Exhibit B, Section 3.2.1
Identification of Proposer and Equity Members	Form B-1	Exhibit B, Section 3.2.2
Information About Proposer Organization	Form B-2	Exhibit B, Section 3.2.2
Information About Major Participants, Major Professional Services Firms and Identified Subcontractors	Form B-3	Exhibit B, Section 3.2.2
Responsible Proposer and Major Participant Questionnaire	Form C	Exhibit B, Section 3.2.3
Key Subcontractors	Form D	Exhibit B, Section 3.2.4
Personnel Work Assignment Form	Form E	Exhibit B, Section 3.2.5
Key Personnel Statements of Availability	No forms are provided	Exhibit B, Section 3.2.5
Safety Manager Qualifications Commitment Statement	No forms are provided	Exhibit B, Section 3.2.5

Proposal Component	Form (if any)	ITP Section Cross-Reference
Copies of TxDOT Letter(s) Approving Changes in Key Personnel	No forms are provided	Exhibit B, Section 3.2.6
Copies of TxDOT Letter(s) Approving Changes in Proposer's Organization	No forms are provided	Exhibit B, Section 3.2.6
Non-Collusion Affidavit	Form F	Exhibit B, Section 3.2.7
Buy America Certification	Form G	Exhibit B, Section 3.2.8
DBE Certification	Form H	Exhibit B, Section 3.2.9
Child Support Statement for State Grants, Loans and Contracts	Form I	Exhibit B, Section 3.2.10
Conflict of Interest Disclosure Statement	Form J	Exhibit B, Section 3.2.11
Equal Employment Opportunity Certification	Form N	Exhibit B, Section 3.2.12
Certification Regarding Use of Contract Funds for Lobbying	Form O	Exhibit B, Section 3.2.13
Certification Regarding Ineligible Contractors	Form P	Exhibit B, Section 3.2.14
Guarantor Letter (if required)	Form Q. Form B-1 is required for any guarantor.	Exhibit B, Section 3.2.15
Surety Information	No forms are provided.	Exhibit B, Section 3.2.16
Executed Payment for Work Product Agreement	Exhibit H	ITP Section 6.3; Exhibit H
C. Proposal Security		
Proposal Bond	Form K	Exhibit B, Section 3.3.2
D. Project Development Plan		
Project Management Plan	No forms are provided	Exhibit B, Section 5.1
Technical Solutions	No forms are provided	Exhibit B, Section 5.2
Quality Management Plan	No forms are provided	Exhibit B, Section 5.3

Proposal Component	Form (if any)	ITP Section Cross-Reference
E. Substantial Completion Date		
Proposal Commitment for Substantial Completion Date	No forms are provided	Exhibit B, Section 5.4
F. Appendices		
Key Personnel Resumes and References	No forms are provided	Exhibit B, Section 3.2.5
Technical Drawings, Graphs and Data	No forms are provided	Exhibit B, Section 5.2
Preliminary Project Baseline Schedule	No forms are provided	Exhibit B, Section 4.0

Proposal Component	Form (if any)	ITP Section Cross-Reference
Financial Proposal		
Proposers shall follow the order of this checklist in their submissions. A copy of this document, incorporating relevant cross-references to Proposer's Financial Proposal, shall be submitted with the Financial Proposal.		
A. Updated Financial Information		
Copy of Identification of Proposer and Equity Members	Form B-1	Exhibit C, Section 2.0
Copy of Information About Proposer Organization	Form B-2	Exhibit C, Section 2.0
Copy of Information About Major Participants, Major Professional Services Firms and Identified Subcontractors	Form B-3	Exhibit C, Section 2.0
Current Prequalification Letter and Status Letter, if applicable	No forms are provided	Exhibit C, Section 2.1
Copy of Surety Information	No forms are provided	Exhibit C, Section 2.0
Copies of Guarantor Letters (if required)	Form Q. Form B-1 is required for the Guarantor.	Exhibit C, Section 2.0
Letter regarding material change in financial condition since submission of the QS and for next reporting period	No forms are provided	Exhibit C, Section 2.0
B. Price Information		
Design-Build Price	Form M-1	Exhibit C, Section 3.1.1
Base Scope Design-Build Price Breakdown	Form M-1.1	Exhibit C, Section 3.1.1
Additional Scope Design-Build Price Breakdown	Forms M-1.2	Exhibit C, Section 3.1.1
Location Allocation and Pricing	Form M-1.3	Exhibit C, Section 3.1.1
ATC Cost Adjustment	Form M-1.4	Exhibit C, Section 3.1.1

Proposal Component	Form (if any)	ITP Section Cross-Reference
DB Contractor Cash Flow Adjustment Table / Maximum Payment Schedule: Base Scope Design-Build Price	Form M-2	Exhibit C, Section 3.1.1
DB Contractor Cash Flow Adjustment Table / Maximum Payment Schedule: Additional Scope Design-Build Price	Forms M-3	Exhibit C, Section 3.1.1

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 Energy Sector Roadway Repair Project Right of Way at various locations prior to execution of the DBC.

1. Proposer shall complete the Agreement for Engineering Investigations on State Highway Right of Way and forward a signed original agreement and Appendix B, TxDOT Form 1560, Certificate of Insurance, to Frank Holzmann, P.E., with a copy to Carol Luschen, at the following address:

   U.S. Mail/Courier: 814 Arion Parkway, Suite 401
   San Antonio, Texas 78216

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

3. 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 Appendix A.

4. Proposer shall submit Appendix A to Carol Luschen at the following address:

   U.S. Mail/Courier: 814 Arion Parkway, Suite 401
   San Antonio, Texas 78216

   Email: carol.luschen@txdot.gov

5. Prior to a Proposer's entry onto State Highway Right of Way, Proposer must receive Approval from the appropriate area office.

6. Proposer may perform investigations in areas only as requested in each Appendix A.

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

AGREEMENT FOR
ENGINEERING INVESTIGATIONS
ON STATE HIGHWAY RIGHT OF WAY

STATE OF TEXAS)

COUNTY OF _____)

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 Energy Sector Roadway Repair Project; and

WHEREAS, the Requestor has requested permission from TxDOT to use Energy Sector Roadway Repair Project 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, § 9.150-9.155, TxDOT seeks to enter into a design-build contract with a private sector partner and desires the private sector partner to have access to the proposed Project limits for each Location 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:

- the Endangered Species Act of 1973, 16 USC § 1531 et seq. and the regulations there under as amended;
- TxDOT's erosion and sedimentation control standards and TxDOT's Vegetation Management Standards, which may in any way regulate or control the activity;
- all State and federal environmental laws and any conditions required by TxDOT to protect the environment.
- 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:

- Mutual agreement and written consent of both parties,
- 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),

- TxDOT for reasons of its own and not subject to mutual consent of the Requestor upon not less than 15 days written notice to the Requestor, or
- 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 APPENDICES

Appendix	Description
A	DBC Site Investigation on Highway Right of Way
B	TxDOT Form 1560, Certificate of Insurance

Appendix A
DBC SITE INVESTIGATION ON HIGHWAY RIGHT OF WAY

_____ is giving written notice of proposed Work to take place within the right of way of Energy Sector Roadway Repair Project 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 Energy Sector Roadway Repair Project Design-Build Contract. 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 ____ .

Requestor 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.

TxDOT Form 1560 (Rev 04/2002) Previous editions of this form may not be used.
Page 1 of 2

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:

Endorsed 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:**
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 mail 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 mail 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)

CONTRACTOR'S

RIGHT OF ENTRY AGREEMENT

(TEXAS)

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____,

by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____

_____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of Texas. [which work is the subject of a contract dated _____ between Railroad and _____]. [as such location is also shown on the print dated _____, marked **Exhibit D**, attached hereto and hereby made a part hereof.]

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS A, B AND C.

The terms and conditions contained in **Exhibit A, Exhibit B** and **Exhibit C**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - <u>ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE</u>.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

_____

_____

_____

_____

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit A**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - <u>TERM; TERMINATION</u>.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - <u>CERTIFICATE OF INSURANCE</u>.

A. Before commencing any work, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Union Pacific Railroad Company

_____

[Insert mailing address]

_____

_____

Attn:_____

ARTICLE 7 - DISMISSAL OF CONTRACTOR's EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars ($_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By:_____

Title:_____

_

_____

(Name of Contractor)

By:_____

Title:_____

EXHIBIT A

TO

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work , even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. TO THE EXTENT NOT PROHIBITED BY APPLICABLE STATUTE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES ("INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY

MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.

B. THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.

C. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY RAILROAD UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.

D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST RAILROAD.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

EXHIBIT B

TO

CONTRACTOR'S

RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company

Insurance Provisions For

Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain a single limit of at least $2,000,000 each occurrence or claim and an aggregate limit of at least $2,000,000 and include broad form contractual liability coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The workers compensation and employee related exclusions in the above policy apply only to Contractor's employees.
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including, but not limited to, tracks, bridges, trestles, roadbeds, terminals,

underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

- Coverage for Contractor's (and Railroad's) employees shall not be excluded

- Waiver of subrogation

If Contractor will be using, storing and/or handling hazardous materials, Contractor, in addition to the other endorsements to be obtained by Contractor as provided in this exhibit, must also ensure that the Commercial General Liability Insurance policy contains a Designated Premises Pollution Coverage (CG00-39) endorsement. Evidence of the endorsement must also be indicated on the certificate of insurance that is provided to Railroad.

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least $2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage

- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The workers compensation and employee related exclusions in the above policy apply only to Contractor's employees.

- Products and completed operations.

- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) **if required by law**.

C. **Workers Compensation and Employers Liability** insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of Texas

- Employers' Liability (Part B) with limits of at least

  $500,000 each accident, $500,000 disease policy limit

  $500,000 each employee

If the State of Texas requires participants in a state workers' compensation fund and if Workers Compensation insurance will not cover the liability of Contractor in the State of Texas, Contractor shall comply with such laws. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include

liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. **Railroad Protective Liability** insurance naming only Railroad as the insured with a combined single limit of $2,000,000 per occurrence with a $6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to Railroad until the original policy is forwarded to Railroad.

SECTION 1.0 OTHER REQUIREMENTS

F. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

G. Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. The coverage provided to Railroad as additional insured shall provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

I. Prior to commencing the work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

J. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Texas.

K. Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.

L. If Contractor fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Contractor, plus a 25% administration fee.

M. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

EXHIBIT C

TO

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

(i) Waist-length shirts with sleeves.

(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.

(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.

(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.

(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
-

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

(ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.

(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.

(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).

(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.

(v) Before stepping over or crossing tracks, look in both directions first.

(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT D

TO

CONTRACTORS RIGHT OF ENTRY AGREEMENT

If a print of the right of entry area to be used by Contractor is available, it should be marked **Exhibit D** and attached here as part of the Agreement.

Exhibit G

MINUTE ORDER

TEXAS TRANSPORTATION COMMISSION

(See attached)

Exhibit H

FORM OF PAYMENT FOR WORK PRODUCT AGREEMENT

PAYMENT FOR WORK PRODUCT AGREEMENT
(Energy Sector Roadway Repair Project)

THIS PAYMENT FOR WORK PRODUCT AGREEMENT is made and entered into as of this _____ day of 2013, 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 Energy Sector Roadway Repair Project (the "Project"), and wishes to submit a Proposal in response to the Request for Proposals for the Project issued by TxDOT on September 27, 2013, 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 Technical 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:

SECTION 2.0 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 regarding ownership of EPDs, 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.

SECTION 3.0 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) eighteen (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.

SECTION 4.0 COMPENSATION AND PAYMENT

(a) If, following receipt of Proposals as requested by the RFP, the Design-Build Agreement is awarded by TxDOT to a proposer other than 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) 0.25% of the successful proposer's Design-Build Price; provided, however, that in the event the procurement is terminated before execution of the DBC, TxDOT shall pay Proposers a partial lump sum in the amount of $125,000. 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 Design-Build 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 DBC, is posted on the Project Webpage, 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).

SECTION 5.0 INDEMNITIES AND SURETYSHIP

(a) INDEMNITY. 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.

SECTION 6.0 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, excluding only the EPDs, are, upon their receipt by TxDOT, the property of TxDOT and are subject to the Public Information Act.

(b) Proposer shall comply with all federal, state, and local laws; ordinances; rules; and regulations applicable to the work or payment therefor, 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.

SECTION 7.0 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.

SECTION 8.0 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.

SECTION 9.0 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 I
LOCATIONS

Rank	District	Highway	County	Physical Limits (From)	Physical Limits (To)	Warranty Type and Period	Description of Work
1	Laredo	FM 133	LaSalle	IH 35	Dimmit C/L	Materials and Workmanship ("M&W"); 1 year	Pavement widen/resurface
2	Corpus Christi	FM 882	Bee	FM 626	SH 72	M&W; 1 year	Pavement widen/resurface
3	Corpus Christi	US 181	Karnes	FM 887 W	FM 1144	General; 2 years	Pavement widen/rehab
4	Laredo	FM 190	Dimmit	13th Street	US 83 North	M&W; 1 year	Pavement widen/resurface
5	San Antonio	SH 16	McMullen	Tilden city limits	Duval C/L	General; 2 years	Pavement resurface/super 2
6	Yoakum	FM 443	Gonzales	Dewitt C/L	US 90	M&W; 1 year	Pavement widen/resurface
7	Yoakum	FM 2067	Gonzales	US 183	End of State MNT	M&W; 1 year	Pavement widen/resurface
8	Laredo	FM 469	LaSalle	IH 35 E. FR Intersection	SH 97	M&W; 1 year	Pavement widen/rehab
9	Laredo	IH 35 (W. FR)	LaSalle	LaSalle/Frio C/L	N. Int. BI-35	General; 2 years	Pavement widen/rehab
10	Corpus Christi	FM 627	Karnes	FM 2724	FM 81	M&W; 1 year	Pavement widen/resurface
11	Corpus Christi	FM 2049	Live Oak	IH 37	SH 72	M&W; 1 year	Pavement widen/resurface
12	Yoakum	FM 240	Dewitt	0.2 miles N. of VFW Rd.	US 87	M&W; 1 year	Pavement widen/resurface
13	Laredo	IH 35 (E. FR)	LaSalle	N. Int. BI-35	Frio/LaSalle C/L	General; 2 years	Pavement widen/rehab
14	Corpus Christi	FM 81	Karnes	SH 123	SH 80	M&W; 1 year	Pavement widen/resurface
15	Corpus Christi	FM 81	Karnes	FM 1144	SH 123	M&W; 1 year	Pavement widen/resurface

16	Corpus Christi	FM 1042	Live Oak	US 281	FM 1545	M&W; 1 year	Pavement rehab
17	Yoakum	FM 443	Dewitt	Gonzales C/L	SH 111	M&W; 1 year	Pavement widen/resurface
18	Yoakum	FM 1680	Lavaca	FM 532	Gonzales C/L	M&W; 1 year	Pavement widen/rehab
19	Laredo	FM 117	Zavala	US 57	Zavala/Frio C/L	M&W; 1 year	Pavement widen/resurface
20	San Antonio	FM 140	Atascosa	SH 16	Charlotte city limits	M&W; 1 year	Pavement widen/resurface
21	Corpus Christi	FM 3192	Live Oak	FM 2049	FM 882	M&W; 1 year	Pavement rehab
22	San Antonio	FM 791	Atascosa	US 281A	Karnes C/L	M&W; 1 year	Pavement rehab
23	Corpus Christi	FM 624	Jim Wells	US 281	SH 359	M&W; 1 year	Pavement widen/resurface
24	Yoakum	FM 952	Dewitt	SH 72	FM 2656	M&W; 1 year	Pavement widen/resurface
25	Yoakum	FM 1680	Gonzales	US 90	Lavaca C/L	M&W; 1 year	Pavement widen/rehab
26	San Antonio	FM 791	Atascosa and McMullen	Atascosa/ McMullen C/L	SH 16	M&W; 1 year	Pavement widen/rehab
27	Corpus Christi	SH 119	Karnes	SH 80	Dewitt C/L	M&W; 1 year	Pavement rehab
28	Laredo	FM 624	LaSalle	SH 97	3.16 miles south of FM 469	M&W; 1 year	Pavement rehab
29	San Antonio	FM 791	Atascosa and McMullen	US 281A	Atascosa/ McMullen C/L	M&W; 1 year	Pavement widen/rehab
30	Yoakum	FM 77	Gonzales	US 87	FM 108	M&W; 1 year	Pavement widen/rehab
31	Laredo	FM 469	LaSalle	SH 97	FM 624	M&W; 1 year	Pavement widen/rehab