EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

[Attached]

EXHIBIT 2

DEVELOPER'S PROPOSAL COMMITMENTS AND ATCS

Appendix 1: **Proposal Commitments**

Appendix 2: **ATCs**

Appendix 1 to Exhibit 2

Proposal Commitments

Description	Substantial Completion Deadline
Proposal Commitment Date for Substantial Completion for Phase 1	NTP1 plus 1500 calendar days
Proposal Commitment Date for the Bridge Demolition Work	NTP1 plus 1760 calendar days
Proposal Commitment Date for Substantial Completion for Phase 2	NTP1 plus 1885 calendar days

General Comments:

Cost and/or schedule risks resulting from design refinements and optimizations in final design would remain with Developer.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
1	Technical Solutions, pg 1, 3, sec 4.1	Spans clear existing and future railroads on both sides of the harbor. No fender systems in waterway.
2	Technical Solutions, pg 1, 3, sec 4.1	Twin Precast Concrete Box Girders with precast delta frames provide maximum durability for the harsh coastal climate, with shapes for maximum strength and stability in extreme wind conditions.
3	Technical Solutions, pg 1, 3, sec 4.1	Twin Parallel cable stays in fan arrangement-Open driver views of waterway.
4	Technical Solutions, pg 1, sec 4.1	538'-2" single tower with faceted, tapered shape. Majestic tower top programmable lighting creates a memorable beacon. Tower height is approximate. Actual height is subject to final design refinements.
5	Technical Solutions, pg 1, 3, sec 4.1	Balanced cantilever construction of main span-keep waterway open during construction. Means & Methods for the Construction of the New Harbor Bridge may be changed during final design; however, the Corpus Christi Ship Channel will remain open during construction.
6	Technical Solutions, pg 1, 3, sec 4.1	Cable-Stayed Cradle system inside tower. Only stay anchors needed in the deck, no anchors in the towers. All stay strands are easily replaceable under moving traffic. Best protection in harsh coastal climate.
7	Technical Solutions, pg 1, 3, sec 4.1	Aesthetic lighting with programmable LED fixtures throughout allows nearly limitless design combinations. Lighting designs for the community's selection.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
8	Technical Solutions, pg 1,2 3, & 4 sec 4.1	Approximately 1,655 foot main span - foundations and towers completely out of the water. No work in water for new bridge construction. Entire substructure located on land. All foundations located on land. Avoid any conflicts with existing wharf and no trestle in the Harbor.
9	Technical Solutions, pg 1, 3, sec 4.1	Tower footings placed to protect Port wharf and rail operations on both sides. - Completely clears south side Levee.
10	Technical Solutions, pg 1, 3, sec 4.1	Slender concrete columns in faceted shape - smaller footprint on the land.
11	Technical Solutions, pg 1, 3, sec 4.1	South Approach - Long open spans of approximately180 feet with long continuous units for fewest joints and bearings. Precast concrete segmental box girder bridge with uniform superstructure depth and continuity with box girders of the main span.
12	Technical Solutions, pg 1, 3, sec 4.1	North Approach - Long Open Spans of approximately180 feet with long continuous units for fewest joints and bearings. Precast Concrete Segmental Box Girder Bridge with uniform superstructure depth and continuity with box girders of the main span.
13	ATC Technical Solutions, pg 2, sec 4.1	Use epoxy coated or greased and sheathed strands as an integral component of Cable Stay Cradle system.
14	ATC Technical Solutions, pg 2, sec 4.1	Provide 1000 feet minimum from painted nose gore Ramp 52 BBB to painted nose gore Ramp 51 BBB along frontage road;
15	ATC Technical Solutions, pg 2, sec 4.1	High quality integral wearing surface placed with initial precast operations of concrete segmental box girders.
16	Technical Solutions, pg 2, sec 4.1	Precast Concrete Box Girder for approximately 3,285 foot long cable stayed main span superstructure unit.
17	Technical Solutions, pg 2, sec 4.1	Precast piles for high-level approaches, direct connects, and roadway bridges, subject to potential final design refinements.
18	Technical Solutions, pg 2, sec 4.1 and pg 13, sec 4.1.1.1d	Demolition technique for rotating existing bridge truss over main piers away from waterway in order to keep the waterway open after main pier rotation.
19	Technical Solutions, pg 3, sec 4.1	Superior corrosion resistance: precast deck with high strength, low permeable concrete mix in combination with transverse and longitudinal prestressing and monolithically cast wearing surface will operate in a state of net compression.
20	Technical Solutions, pg 3, sec 4.1 and pg 5, sec 4.1.1.b.1, pg 9, sec 4.1.1.1.b.4	170-year design life of cable stay spans and approach span bridges.170 plus year design life on towers, barriers, superstructure deck, web, and bottom slab.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
21	Technical Solutions, pg 3, sec 4.1	Top of tower foundation is flush with the top of wharf, expanding useable space.
22	Technical Solutions, pg 3,6 sec 4.1, 4.1.1.1.b2	No fenders; no fender maintenance. No Cofferdams Anticipated or Fenders Required.
23	Technical Solutions, pg 3, sec 4.1	Precast concrete box girders for approximately 8,260 foot long high level approach bridge superstructure.
24	Technical Solutions, pg 3, sec 4.1	Enhanced public safety with traffic control approach – integrated construction schedule with traffic engineering best practices.
25	Technical Solutions, pg 3, sec 4.1	Eliminating long double deck (multi-level) structure (Beach Avenue reconfiguration).
26	Technical Solutions, pg 3, sec 4.1	Robust temporary pavement for MOT staging routes.
27	Technical Solutions, pg 4, sec 4.1	Design avoids corrosion with a biaxial entirely post-tensioned, segmental concrete box girder superstructures and low permeable, high-strength, custom-designed concrete mix.
28	Technical Solutions, pg. 4 Section 4.1.1.1.a	Tower and foundation design entirely avoids vessel collision. This avoids waterway impacts subject to US Coast Guard and Army Corps of Engineers permits.
29	Technical Solutions, pg 5, sec 4.1.1.1.b1	Mitigate security risks with a single plane of stays and towers in the center of the deck.
30	Technical Solutions, pg 5, sec 4.1.1.1.b1	Deck draining away from center protects stay system.
31	Technical Solutions, pg 6, sec 4.1.1.1.b.2	Will perform Statnamic tests for the drilled shafts in the tower foundations and selected driven piles. Concrete piles will be used for all foundation except the towers. Pile Driving Analyzer tests will be performed on the first production pile in each footing.
32	Technical Solutions, pg 6, sec 4.1.1.1.b2	10 foot diameter drilled shafts for main span structure, subject to potential final design refinements.
33	Technical Solutions, pg 6, sec 4.1.1.1.b2	18” & 24” square pre-stressed, precast concrete piles for approaches and roadway bridges, subject to potential final design refinements.
34	Technical Solutions, pg 8, sec 4.1.1.1.b3	Two reference strands in each stay facilitate maintenance & inspection
35	Technical Solutions, pg 8, sec 4.1.1.1.b3	Stay pipes are designed for security protection.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
36	Technical Solutions, pg 8, sec 4.1.1.1.b3	Deck's cross-slope moves liquids away from stays, protecting them from spilled fuel & fire risk.
37	Technical Solutions, pg 9, sec 4.1.1.1b4	Cantilever wings provide slenderizing shadows for superstructure and structural efficiency.
38	Technical Solutions, pg 9, sec 4.1.1.1b4	No special wind fairings ever needed.
39	Technical Solutions, pg 9, sec 4.1.1.1b4	Laterally & longitudinally post-tensioned deck.
40	Technical Solutions, pg 10, sec 4.1.1.1b5	Deck is precast with the same high-strength, low-permeable concrete as used for the entire segmental superstructure. 100% precast superstructure with built-in deck.
41	Technical Solutions, pg 11, sec 4.1.1.1b6	By using approximately 180' approach spans and strategically placing drain inlets at approach piers, Developer has generally eliminated longitudinal drain pipe runs and related connectors along the bridge.
42	Technical Solutions, pg 11, sec 4.1.1.1.b6	On the main span bridge Developer will locate deck drainage pipes inside the box girder to avoid exposed longitudinal runs.
43	Technical Solutions, pg 11, sec 4.1.1.1.b6	The deck drainage will be piped down the recessed and least visible column face to the base of the approach bridge piers, where water will be detained in swales and slowly flow down to the Harbor with some filtering through the overburden into the water table.
44	Technical Solutions, pg 11, sec 4.1.1.1b8	The Shared Use Path finishes, barrier fencing and added features will offer enhanced aesthetic qualities that add interest for the local public and visitors to the area. The overlook features an educational and cultural viewing space for bird watching and coastal land and sky viewing with telescopes. The Belvedere overlook configuration is designed to serve as a destination point that will attract visitors to experience the beauty of the bridge and surrounding natural environment.
45	Technical Solutions, pg 11, sec 4.1.1.1b8	On the belvedere, provide a supporting bench divider with a field map of the constellations that are lit at night.
46	Technical Solutions, pg 11, sec 4.1.1.1b8	Benches of low maintenance, sustainable composites.
47	Technical Solutions, pg 11, sec 4.1.1.1b7	Box Girder Access - Interior: is easily accessed by lockable open-grid doors at the abutments and intermediate openings in the bottom soffit. Diaphragm openings at pier and expansion segments and the interior height of the box girders allow inspectors to walk comfortably through all spans.
48	Technical Solutions, pg 11, sec 4.1.1.1b7	Box Girder Access – Exterior: Easily accessed via mobilized vehicles with booms (snooper trucks) due to the centrally-located single plane of stays.

Proposal Commitments

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49	Technical Solutions, pg 11, sec 4.1.1.1b7	Cable Stay Tower Access: Interior surfaces of the towers and FAA lighting can be accessed by secured doors located just above the deck-level security system and leading to access ladders inside the tower.
50	Technical Solutions, pg 13, sec 4.1.1.1c	Standard TxDOT precast concrete beams will be used for the interchange, roadway bridges, and direct connectors. The pier shapes will be faceted like the piers of the long box girder approaches using single columns. The common shapes and depths create a family of structures with appealing forms.
51	Technical Solutions, pg 13, sec 4.1.1.1d	Drainage inlets at every bridge pier direct deck runoff straight down at piers to managed treatment at ground level. In final design it may be necessary to adjust the deck drainage and not every pier will have a “down spout”. It is the intent to treat the water at ground level and not at or near deck level.
52	Technical Solutions, pg 13, sec 4.1.1.1e	The single plane of dual, parallel stays in the center of the bridge minimizes the number of bridge inspection and maintenance set ups and operations (as opposed to stays on deck outside edges).
53	Technical Solutions, pg 14, sec 4.1.1.2	Developer will replace the Salt Flat Box without any impact to mobility. It is Developer’s intent to maintain traffic during all operations; any traffic closure will be with permission and will be temporary. Well signed and short detours would be expected as part of construction.
54	Technical Solutions, pg 16-17, sec 4.1.1.3b, Draft CEPP pg 9-10, sec 2.0, and Draft PICP pg 2	Work will include:--Stakeholder identification and mapping--Mobile media--Strategic communications planning Community meetings--Key message development--Print and electronic newsletters--News bureau (media relations)--Ground-breaking/milestone celebration events--Speakers bureau--Saturday sidewalk talks with community Project education collateral and material --Civic participation and philanthropic programs--Project website--Project educational videos and info graphics--Social media (Facebook, Twitter, Instagram, etc.)
55	Technical Solutions, pg 17, sec 4.1.1.3c	Developer will create a schedule of reviews and approvals and get buy-in from all parties.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
56	Technical Solutions, pg 20, sec 4.1.1.5.b Draft CEPP pg 19 sec 3, and Draft PICP pg 3.0	Implement the following measures to ensure compliance with environmental permits and approvals. --Training – Upon NTP1, Developer will utilize proven training materials for mandatory, internal training sessions. Developer will train all new employees and hold refresher training every six months. --Coordination – Developer will engage in efficient and frequent coordination with TxDOT, the Construction Team, Regulatory Agencies, the Public, Stakeholders, etc. (per TxDOT's permission). --Efficient Tracking –Developer will utilize hand-mobile devices to review the developing design on aerial imagery overlaid with known environmental constraints. This will allow the team to efficiently review the developing design, quickly identify environmental resources that may be impacted, and immediately determine if additional environmental work and studies may be required. This analysis and any required data collection, including monitoring forms, will be recorded in the secure-access website. Other benefits of mobile devices are: -- Immediate access to all construction and environmental plans, schedules, design data, contact information, training materials, and wildlife information --Multiple field crews may work simultaneously in the same areas without duplicating efforts -- Field documentation will be directly integrated into environmental reports, eliminating the need to convert handwritten forms and field notes after field collection
57	Technical Solutions, pg 21, sec 4.1.1.5b, and CEPP pg 19, sec 3.0	Provide environmental plans for all employees working on the Project and train each employee on plan implementation.
58	Technical Solutions, pg 21, sec 4.1.1.5b	Improve the tidally-influenced Salt Flat box ditch--Consider mitigating impacts to the Salt Flat box by redesigning the existing concrete-lined bottom to include a natural bottomed channel.
59	Technical Solutions, pg 21, sec 4.1.1.5b	Implement temporary erosion & sediment control BMPs and final stabilization measures.
60	Technical Solutions, pg 21, sec 4.1.1.5b	Use qualified biological monitors on-site and proven BMPs.
61	Technical Solutions, pg 21, sec 4.1.1.5b	Implement careful vegetation clearing and replanting techniques.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
62	Technical Solutions, pg 21, sec 4.1.1.5b	Implement a Haz Mat & Waste Control Management Plan Per Figure 4.1-5. • Train employees in applicable federal & state laws to identify, handle, remove and dispose of HazMat waste • Train construction employees on protocols for safely identifying and responding to HazMat issues • Design to avoid construction in areas with a known potential for hazardous materials wherever possible • Reduce the potential for disturbance of and risks associated with hazardous materials
63	Technical Solutions, pg 21, sec 4.1.1.6	Utilize a higher quality temporary pavement design.
64	Technical Solutions, pg 24, sec 4.1.1.6d	Design all pavements for a 30-year design life.
65	Technical Solutions, pg 25, sec 4.1.1.7d	Complete replacement of the Salt Flat box culvert.
66	Technical Solutions, pg 26, sec 4.1.1.7d	Provides a new channel adjacent to jurisdictional waters with a concrete lining and re-routes the existing channel flow into the newly constructed channel, which will connect to the existing structure at West Broadway Street. This relocation allows the footings to be constructed directly under the structure, without more costly (and unsightly) straddle bents, and not in the channel.
67	Technical Solutions, pg 28, sec 4.1.1.8.a	Formally update ROW acquisition activities in Developer's CPM Schedule each month and will review the revised schedule with TxDOT and major third parties at this time to identify issues or constraints and develop a plan to keep the activities on schedule.
68	Technical Solutions, pg 28, sec 4.1.1.8b	Implement a quality control procedure throughout the acquisition and relocation process that will include the following steps: --Implement a peer review system whereby agents review another agent's parcel work file for each task at different stages of the acquisition/relocation process. --Review each task in the process to assure accuracy and compliance with the property owner's rights in accordance with the URA, TxDOT policy and procedures, and Texas Senate Bill 18. --Review each agent's work product for quality, compliance, and accuracy throughout the term of the Project. --Compile a checklist of all documentation required in a parcel file. This checklist will be inserted into each parcel file and marked when each task is completed to assure compliance with the URA, TxDOT policies and procedures, and Texas Senate Bill 18.
69	Technical Solutions, pg 29, sec 4.1.1.8c	Prioritize two apartment properties that have multiple relocations.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
70	Technical Solutions, pg 30, sec 4.1.1.9a	Include all utility location information within the Project ROW, including any utilities requiring easements, on the updated utility strip map, utility concept plan and roadway design plans, where necessary.
71	Technical Solutions, pg 30, sec 4.1.1.9b	Hold the following meetings: --Regular one-on-one utility design meetings --Bi-Weekly utility status meetings with TxDOT --Group utility coordination meetings with all utility owners --Off-week design review meetings with TxDOT as needed --Design review meetings with roadway design team during their task force meetings.
72	Technical Solutions, pg 31, sec 4.1.1.9c	Communicate and coordinate utility needs with each affected design discipline during all phases of design development and throughout construction to minimize impacts.
73	Technical Solutions, pg 32, sec 4.1.1.10	Update the existing signing and pavement markings impacted by the New Harbor Bridge and portions of US 181, I-37, SH 286, the connection of Upper and Lower Broadway Street to I-37, and demolition of the existing Harbor Bridge.
74	Technical Solutions, pg 32, sec 4.1.1.10	The signal design will provide both pedestrian and vehicle detectors at all traffic signals within the Site and shall comply with the Texas Accessibility Standards (TAS), the Americans with Disabilities Act (ADA) and TxDOT Special Specification 8835.
75	Technical Solutions, pg 33, sec 4.1.1.10	During final design, an acceptance test plan (ATP) for traffic signals will be conducted, conformance results documented and submitted to TxDOT and appropriate Government Entities.
76	Technical Solutions, pg 34, sec 4.1.1.10b	Understructure lighting at overpasses will be placed in a configuration that minimizes the need for lane closures during normal maintenance operations.
77	Technical Solutions, pg 34, sec 4.1.1.10b	The Navigation lighting will be easily accessible for maintenance from inside the box girder superstructure.
78	Project Management Plan, pg 42, sec 4.2.1.b.i	Maintain extensive equipment fleets and material stockpiles in the Corpus Christi area.
79	Project Management Plan, pg 42, sec 4.2.1.b.i	Construction materials will be procured from local suppliers located in Corpus Christi and throughout the region, to the extent the materials are available locally.
80	Project Management Plan, pg 54, sec 4.2.2	Use drilled shafts for tower foundations in lieu of driving piles to reduce turbidity and noise/vibration impacts to marine life, subject to potential final schedule refinements.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
81	Project Management Plan, pg 56, sec 4.2.3.c	Reduce the amount of truck traffic on existing roads by exploring opportunities with the Port to utilize rail and barge for hauling the precast segments and other materials. Keep truck traffic on highways and arterial roads and off local streets to the greatest extent possible. Maintain access to adjacent roads, residences, and businesses during construction. Use signage and the Project website to inform the traveling public of the different access points to the adjacent roads and businesses. Maintain the landscape through mowing or seeding and mulching.
82	Project Management Plan, pg 56, sec 4.2.3.d	Hold a coordination meeting with other contractors, TxDOT, and the City of Corpus Christi after NTP 1 to review Developer's schedules and create a master construction schedule for TxDOT and the City of Corpus Christi.
83	Project Management Plan, pg 56, sec 4.2.4	Use a SharePoint based project management software to establish a comprehensive document, cost control, and schedule management system.
84	Project Management Plan, pg 62, sec 4.2.6b, Draft CEPP, pg 5-6, sec 1.0	Upon NTP 1, meet with TxDOT to review and approve the preliminary list of planning commitments from the CEPP, including, but not limited to: • Environmental Compliance and Mitigation Plan (ECMP) • Environmental Protection Training Plan (EPTP) • Hazardous Materials Management Plan (HMMP) • Communication Plan (CP) • Construction Monitoring Plan (CMP) • Recycling Plan (RP) • Job Fair(s) Plan • Sustainability Plan • Construction Air Emission Control Plan • Traffic Plan • Demolition Plan • Soil Management Plan • Groundwater Management Plan • Blue Ribbon Panel Plan • Content Sensitive Solutions Plan
85	Project Management Plan, pg 68, sec 4.2.8d	Provide an on-the-job training (OJT) similar to the program Flatiron used on the Cooper River Cable-Stayed Bridge in South Carolina. Flatiron will provide TxDOT with a copy of the approved Copper River Bridge project OJT for review.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
86	Maintenance Management Plan, pg 74, sec 4.3d.2	Cable-Stayed Bridge --Train bridge inspectors to identify early evidence of deterioration and causes thereof --Complete inspection reports that describe deficiencies found, identify likely causes, and recommend maintenance and repairs --Detect deficiencies early and promptly perform corrective actions to greatly reduce the life cycle costs of maintenance --Track and archive inspection reports, recommendations, and repairs within a Bridge Management System (part of the MMS)
87	Maintenance Management Plan, pg 74, sec 4.3d.2	Bridge Structures(Openings greater than 20 feet) --Maintain bridges and qualifying culverts to provide excellent performance over the long-term of the Project --Sweep shoulders with sufficient frequency to meet the Performance Requirements but at least monthly --Perform inspections with sufficient frequency to meet the Performance Requirements but at least biennially that will help identify localized corrosion issues, which will be repaired as needed --Proactively complete preventive paint system replacement (for steel beams) before member deterioration occurs --Repair any small deck conditions during nighttime lane closures --Repair joints during night closures as well --Utilize local subcontractors for specialized works involving maintenance and rehabilitation
88	Maintenance Management Plan, pg 74, sec 4.3d.2	Roadway Surface (Pavement) --Review pavements informally during staff's daily patrols --Utilize "high early" strength cementitious repair products for short-term remediation; when possible, crews will perform this work during night hours to minimize mobility impacts --Perform joint/crack sealing routinely in the medium term --Perform long-term rehabilitation that will consist of pavement overlays or full depth replacement. Developer's pavement plan will conform to pavement interventions at required intervals and will include new pavement markings and reflectors
89	Maintenance Management Plan, pg 74, sec 4.3d.2	Drainage --Inspect drains daily, especially after heavy rains where performance of drainage conveyance and structures can be monitored, identifying potential problems --Utilize commercial specialty contractors with a high volume vacuum truck to clean inlets if needed --Sweep roadway with sufficient frequency to meet the performance requirements but at least monthly to prevent major blockages. This, along with daily debris removal, should preclude major blockages to the system and provide a high level of reliability

Proposal Commitments

No.	Proposal Location	Proposal Commitment
90	Maintenance Management Plan, pg 74, sec 4.3d.2	Metal Gantries, Sign Structure and High Mast Light Poles --Visually inspect metal gantries, sign structures, and high mast light poles with sufficient frequency to meet the Performance Requirements but at least on an annual basis --Perform specialist inspections on sign structures as necessary to supplement the routine biennial inspections by TxDOT in order to meet the Performance Requirements; any that require repair will be completed within required rectification times
91	Maintenance Management Plan, pg 75, sec 4.3d.2	Guardrail and Impact Attenuators --Provide immediate notification by first responders to maintenance crews in the case of a major impact --Make the area safe, remove damaged materials, and provide warning until a permanent repair is made --Schedule a local specialist subcontractor to repair damaged items, if needed
92	Maintenance Management Plan, pg 75, sec 4.3d.2	Signs --Inspect signs visually during daily patrols and schedule for repairs as needed --Keep common small signs (Stop, Yield, etc.) in stock due to their critical nature --Install roll-up temporary signs to provide direction to motorists until permanent signs can be installed --Install temporary signs within two hours of notification of damage --Check electronic displays, such as Dynamic Message Signs, daily and keep critical spare parts in stock for repairs
93	Maintenance Management Plan, pg 75, sec 4.3d.2	Traffic Signals --Inspect traffic signals visually during daily patrols --Report issues immediately to responsible agencies --Work with TxDOT and or municipalities to adjust timing of the system, if needed
94	Maintenance Management Plan, pg 75, sec 4.3d.2	ITS --Perform visual inspections of critical ITS elements such as cameras, message panels and weather stations --Keep certain elements in inventory to allow for quick repairs on items that affect safety --Perform regular preventive maintenance on all system components to address environmental conditions and minimize corrective measures --Give special attention to the communications system, which will be continuously monitored in order to promptly respond to any disruption in service
95	Maintenance Management Plan, pg 75, sec 4.3d.2	Roadway Lighting, Sign Lighting, and High Mast Lighting --Review roadway lighting, sign lighting, and high mast lighting during routine patrols, and note any outage, damage or malfunction --Perform night inspections and report outages immediately to O&M supervisors and, where applicable, responsible agencies

Proposal Commitments

No.	Proposal Location	Proposal Commitment
96	Maintenance Management Plan, pg 75, sec 4.3d.2	Fences, Retaining Walls, and Sound Walls --Monitor fences, retaining walls, and sound walls during daily patrols --Mitigate any major damage within 24 hours --Remedy openings in fences and repair other damage within timeframes specified in the Technical Provisions
97	Maintenance Management Plan, pg 75, sec 4.3d.2	Vegetation --Perform mowing regularly to keep the grass within the heights of the performance requirements --Perform mowing and litter removal in vegetated areas along the right-of-way concurrent with mowing cycle --Schedule mowing as needed, with a cycle completed approximately every other month --Put in place a herbicide program to minimize weeds --Mow, clean, and maintain landscaped areas with in-house staff and subcontractors
98	Maintenance Management Plan, pg 75, sec 4.3d.2	Litter --Remove routine litter accumulations at least weekly and prior to all mowing operations --Remove litter in large areas or heavy litter within 24 hours
99	Maintenance Management Plan, pg 75, sec 4.3d.2	Slope --Document slopes conditions observed during general drive-by inspections --Repair and stabilize any areas showing subsidence or damage --Review problems recurring in the same area and begin further long-term repairs
100	Quality Management Plan, pg 90, sec 4.4.c.2	A master document control log, accessible through Developer's SharePoint based document control system, will indicate the current status and version of each submittal.
101	Draft CEPP, pg 8, sec 2.0	Coordinate Union Pacific Railroad (UPRR) and Port of Corpus Christi Authority (CCA) to accommodate rail crossings
102	Draft CEPP, pg 18, sec 2.0	The following plans will be provided to all employees working on the Project and each employee will be trained in the implementation of the plans: ECMP, EPTP, RP, Construction Air Emissions Control Plan
103	Draft CEPP, pg 19, sec 2.0	Design to avoid construction in areas of with a known potential for hazardous materials wherever possible

Proposal Commitments

No.	Proposal Location	Proposal Commitment
104	Draft CEPP, pg 29, sec 2.0	Conduct TxDOT's right of way acquisition and relocation assistance program (RAP). Provide relocation resources to all eligible displaced residences, including tenants, without discrimination. Provide considerations for Housing and Urban Development (HUD) Section 8 Existing Housing Certificates or Housing Vouchers offered through the TxDOT Rental Assistance Program. Coordinate with the City of Corpus Christi's Neighborhood Services Department to accommodate displaced residents. Work with the Workforce Solutions of the Coastal Bend to ensure that displaced employees are aware of offerings including career development information, job search resources, and training programs. Prior to construction, TxDOT and the contractor will conduct one or more job fairs to provide opportunities for local residents.
105	Draft CEPP, pg 29, sec 2.0	Documented in the cultural history of the Northside neighborhoods by researching the oral history of the area, preparing displays and completing a report within 1 year of the start of construction.
106	Draft CEPP, pg 29, sec 2.0	Conduct future public involvement to allow the public/neighborhood residents opportunity to participate regarding aesthetic treatments, landscaping, and lighting.
107	Draft CEPP, pg 29, sec 2.0	Extend Lake Street to replace access loss to neighborhood parks and other important community resources.
108	Draft CEPP, pg 29, sec 2.0	Coordinate to advance livability initiatives in the North Side community. Initiatives include: - Improve Northside residential streets connecting to the Sports, Entertainment, and Arts (SEA) District and downtown - Add street lights and other practicable aesthetic treatments within the Northside neighborhoods - Provide more transportation choices, including bicycle and pedestrian routes and transit - Provide preferential consideration for applicants to the proposed Palms at Leopard affordable housing development for persons displaced from the Northside community - Coordinate with HUD to identify opportunities to increase the availability of affordable housing in the community - TxDOT or contractor to provide shuttle bus service and driver during Project construction through the US 181 construction zone
109	Draft Sustainability Plan, foreword	For activities related to the design and construction of the Project, a **PLATINUM** rating will be achieved, which is the highest possible.
110	Draft Sustainability Plan, foreword	For activities related to the operations and maintenance of the Project, a **PLATINUM** Rating will be achieved, which exceeds the performance targets set for the Project.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
111	Draft Sustainability Plan, pg 3, sec 1.0	The Project will achieve a “Platinum” rating in the Project Development (PD) module and a “Platinum” rating in the Operations & Maintenance (OM) module according to the latest version of the program – INVEST 1.1 – which is detailed in Developer’s INVEST Scoring Manual (Draft).
112	Draft Sustainability Plan, pg 4, sec 3.1	Virgin materials will be sourced from the closest location possible, reducing energy cost and consumption related to transportation.
113	Draft Sustainability Plan, pg 4,16, sec 3.1, 6.0	Off-site materials will be transported with a focus on barges and rail delivery to reduce trucks on the highway. The materials will be resourced as close to the site as possible with primary transportation handled by existing barge and rail to reduce trucking at the site.
114	Draft Sustainability Plan, pg 4, sec 3.1	Recycling and reuse initiatives will be in place at every opportunity during construction, including the demolition of the existing US 181 Harbor Bridge and any roadway bridges and highways. Initiatives will be established, implemented, and maintained to re-use and recycle as much material as possible resulting from demolition, including significant amounts of asphalt, steel, concrete, sign structures, and lighting fixtures. Materials will be reused on site or repurposed as appropriate to reduce energy costs.
115	Draft Sustainability Plan, pg 5, sec 3.1	A precasting yard will be built within close proximity to the Project right of way.
116	Draft Sustainability Plan, pg 5, sec 3.1	Daytime construction activities will be scheduled as much as possible to reduce the need for artificial lighting. However, when nighttime construction activities are scheduled, eco-friendly, low energy “light balloons” will be used in strategic locations to safely light the construction site. Light balloons self-inflate to a spherical shape and diffuse a glare-free, soft light, free of shadows in 360° for a large area.
117	Draft Sustainability Plan, pg 5, sec 3.2	The new Harbor Bridge will utilize cutting-edge “green” technologies, such as the latest in solar and wind power and LED lighting, to provide context-specific solutions to benefit both the structure and the environment.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
118	Draft Sustainability Plan, pg 5, sec 3.2	Solar technology will be incorporated into the design of the new Harbor Bridge to capture solar energy during the day and convert it into useable power for lighting at night. The following applications of solar panel technology will be considered in developing methods to incorporate alternative sources of energy in the final design and construction: • Solar brick pavers with LED lighting will mark the shared use path (SUP) entrances leading to the bridge and will be integrated into the landscaped areas. • Solar path markers with LED lighting in the surface of the SUP on the bridge at ¼-mile intervals will provide designated distance information for users. • Solar powered construction features will be used, including: flashing beacons, traffic control devices, and/or solar powered variable message signs.
119	Draft Sustainability Plan, pg 6, sec 3.2	A wind turbine will be utilized to harness the abundant resource of coastal wind and generate power for lighting needs at night. As an energy-generating "functional sculpture", this natural power source can be a focal element of the trailhead or community areas in shared use path connections leading to various community points of interest. The sculptural aspect of the turbine would be further highlighted by a creative LED lighting design at night.
120	Draft Sustainability Plan, pg 6, sec 3.2	Low-maintenance, low-energy, light-emitting diode (LED) fixtures will be used extensively throughout the lighting design for the new Harbor Bridge, including LED flood lights for large scale illuminations, and smaller LED applications for more specific roadway and aesthetic lighting applications. All highway, pedestrian, and aesthetic lighting will be LED.
121	Draft Sustainability Plan, pg 6, sec 4.0	The Final Sustainability Plan will address community comments expressed in the Final EIS and exceed all requirements therein.
122	Draft Sustainability Plan, pg 7, sec 4.1	Throughout the construction phase, initiatives will be established, implemented, and maintained to maintain pedestrian access and mobility to important community facilities, such as the Oveal Williams Senior Center and the CHRISTUS Spohn Health Clinic.
123	Draft Sustainability Plan, pg 7, sec 4.1	Wheelchair-accessible shuttle bus services will be utilized during the construction phase of the Project to safely and efficiently transport residents through the construction zone.
124	Draft Sustainability Plan, pg 7, sec 4.2	A key method to recruiting a local labor force is the commitment to hold at least two job fairs prior to the start of construction activities.
125	Draft Sustainability Plan, pg 8, sec 4.4	Noise walls will be installed prior to construction.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
126	Draft Sustainability Plan, pg 8, sec 4.4	Wooden fence panels will be offered for visual protection from construction activities. Prior to installation, local artists and/or school children will create masterful designs for colorful display. At the end of construction, these panels will be auctioned at a community event, with proceeds benefitting local charities in these neighborhoods.
127	Draft Sustainability Plan, pg 8, sec 4.4	Community events will be organized and held throughout the Project duration, including: • A design charette will be held with the owner and community review teams for aesthetics and sustainability and invited community guests to select key features of the Project provided in the Aesthetics Plan. This will create excitement, ownership, and comfort that the bridge truly captures the local vision of Corpus Christi's sense of place. • 40 or more Saturday sidewalk talks with construction leaders will be held with the community in designated locations to learn about the ongoing activities of construction. • Quarterly, or more, neighborhood meetings will be conducted with each neighborhood, led by the Sustainability Manager and her team to ensure all features of the project are integrated with an enthusiastic and lasting impression from the community. • A Bridge Education program for individual middle schools will be conducted by the Sustainability Managers team with support from the construction team. This will be a hands-on STEM/Sustainability learning experience like Developer held for 1,800 school children on the New I-35W Bridge (Minneapolis, MN). • A Sustainability Conference will be organized and sponsored for the community to share sustainability initiatives for the Project and offer resources about how sustainability can enrich their individual lives. The Sustainability Managers team will organize vendors that achieve the vision of the conference. This will bring resources to the community in a centralized comprehensive fashion and encourage "green living," which provides a long term benefit to the Corpus Christi community. • Arbor Day and Earth Day events will be held at the Project site landscaping areas for the community, including school children, to celebrate the local beauty of the natural environment. • The building of at least one Habitat for Humanity home will be sponsored in the Northside neighborhood area.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
128	Draft Sustainability Plan, pg 10, sec 4.5	A formal Dust/Emission and Odor Control Plan will be established, implemented, and maintained to minimize construction emissions into the air. This plan will include, but is not limited to, the following mitigation approaches: • All disturbed ground areas and earthwork areas will be covered or treated (e.g., sprinkling). • For all loaded trucks transporting materials, protection of loose material will be achieved by covering the truck bed, wetting material, and/or providing adequate freeboard to prevent particulate emissions into the air during haul. • Construction activities will be scheduled to reduce traffic delays during peak travel times to limit secondary impacts to air quality caused by traffic congestion. • Truck haul routes will be finished with gravel or pavement. • Debris created from the demolition of the existing Harbor Bridge will be contained. • Vegetative cover will be planted as soon as possible after earthwork is complete.
129	Draft Sustainability Plan, pg 10, sec 4.6	To respect the living environment of the surrounding community and neighborhoods, every reasonable effort will be made to minimize construction noise for the duration of construction activities.
130	Draft Sustainability Plan, pg 12, sec 4.7	The Stormwater Quality Maintenance/Enhancement Plan will include, but is not limited to, the following BMPs to mitigate water resource impacts during and after construction: • Fiber rolls and/or biodegradable silt fences for erosion/sediment control during construction • Vegetative cover planted soon after earthwork • Temporary and/or permanent riprap on slopes that may or may not be unstable • Storm drain inlet protection during construction • Proper collection and diversion of stormwater by a permanent system designed for peak flow rates associated with an appropriate design storm
131	Draft Sustainability Plan, pg 13, sec 4.8	Sustainability initiatives will be established, implemented, and maintained to address context specific concerns and mitigate adverse impacts to local vegetation. Those initiatives will include, but are not limited to, the following: • Limiting disturbance of vegetation during construction and construction-staging activities • Restoring and reseeding disturbed areas according to TxDOT specs and in compliance with the FHWA Executive Memorandum on Environmentally and Economically Beneficial Landscape Practices • Preventing the introduction of invasive species during construction • Using native species for all landscaping needs to support the local ecosystem

Proposal Commitments

No.	Proposal Location	Proposal Commitment
132	Draft Sustainability Plan, pg 14, sec 4.9	Sustainability initiatives will be established, implemented, and maintained to address context specific concerns and mitigate direct and indirect impacts to local wildlife. Those initiatives will include, but are not limited to, the following: • The use of BMPs to protect wildlife habitats from stormwater runoff • Careful vegetation clearing and replanting • Protection of local species, such as nesting birds, from direct harm
133	Draft Sustainability Plan, pg 15, sec 5.0	Recycling was explicitly considered in the development of a sustainable design. Examples include: • Benches at the belvedere and landscape/trailhead areas that are purchased will be made from recycled materials • Lighting on the existing Harbor Bridge will be incorporated into the feature lighting design of the new Harbor Bridge where possible • Re-using sign structures on the new alignment • Re-use concrete from interchange bridges as crushed stone in landscape with an ecostain application that has air-cleaning nanotechnology like used on the new I-35W Bridge by Flatiron & Figg.
134	Draft Sustainability Plan, pg 16, sec 7.0	Sustainable construction practice initiatives will include: material waste management and recycling, preferred use of locally sourced materials, project-wide energy efficiency measures, mitigation of construction pollution into air and water.
135	Draft Sustainability Plan, pg 17, sec 8.0	A vacant office space will be chosen with opportunities to increase energy efficiency, improve air quality, and give the space new life. This new sustainable space will be an improved community asset after the Project is completed. In addition, the office will be a model for recycling practices.
136	INVEST Scoring Manual, pg 21	Runoff from the impervious surface areas are, where practical, channeled in grass lined ditches and held in detention basins. The basins are used the north and south side of the ship channel to help convey, clean, and attenuate the storm water flow. Due to the physical location of the project at the tail end of the watershed, the Peak Rate is unaffected by the changes in pervious and impervious areas and extends the flow duration of the watershed. Effective use of BMPs will be an important part of Developer team's stormwater pollution prevention plan. These practices improve the storm water quality form the impacts of this project and control flow to minimize their effects on receiving waters bodies and related water resources.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
137	INVEST Scoring Manual, pg 26	The following pedestrian facilities and features will be designed, constructed, and maintained as part of the Project: • Sidewalks will be designed and constructed along the frontage roads, cross streets, and local streets within the Project Limits. • Pedestrian overpasses will be designed and constructed for crossing I-37. • A new shared use path (SUP) will be incorporated into the design and construction of the new Harbor Bridge, including a belvedere at the midspan over the channel. • Pedestrian signals and curb ramps will be installed at all existing and proposed signalized intersections. • All facilities and features will incorporate needs of all users, including ambulatory, visual, and auditory accommodations.
138	INVEST Scoring Manual, pg 28	A new, continuous SUP will be incorporated into the design of the new Harbor Bridge. The path will separated from vehicular traffic lanes with a barrier and include a belvedere at the crest of the bridge over the channel.
139	INVEST Scoring Manual, pg 35	Several of the ITS applications listed in the requirements will be installed, including: 1. Emergency management/response and recovery • Emergency vehicle preemption • Hurricane evacuation/re-entry management. 2. Information dissemination • Dynamic message signs (DMS) 3. Road weather management • Measurement of atmospheric conditions by environmental sensor stations (ESS) 4. Surveillance • Traffic surveillance • Infrastructure surveillance 5. Traffic incident management • Call boxes
140	INVEST Scoring Manual, pg 40	Energy efficiency for the Project will be achieved by installing efficient fixtures and using renewable energy technologies. PD-17.1 Energy needs will be evaluated for the project and a context-sensitive approach will be used to reduce power consumptions. PD-17.2 Energy efficient fixtures and renewable power sources will be incorporated into the design of the Project. A full analysis of energy efficiency will be completed later in the Project PD-17.3 A plan will be established to audit energy usage
141	INVEST Scoring Manual, pg 41	A strategic, context-sensitive approach will be used in the design of a sustainable site vegetation plan.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
142	INVEST Scoring Manual, pg 46	Points will be earned for reducing and reusing materials based on the following initiatives. PD-19.1 The maximum will be earned during operations and maintenance for pavement preservation based on the plan to mill and overlay the surface every 10 years, including maintenance such as crack sealing, surface seals, etc. PD-19.2 The maximum will be earned for reducing pavement materials. This is based on treating 100% of the main lane pavement area that Developer's team is planning to use recycled, not virgin materials in the flexible pavement structure. PD-19.3 The maximum will be earned for bridge preservation activities during the 25 year maintenance period of the contract. PD-19.4 The maximum will be earned for bridge retrofitting related to the Beach Ave. bridge. PD-19.5 100% of the main lane pavement will use recycled products. PD-19.6 Industrial by-products will be re-used in pavement materials and other roadway elements.
143	INVEST Scoring Manual, pg 48	Points will be earned for recycling materials based on the following initiatives. PD-20.1 Developer anticipates earning points for using recycled materials based on an assumed ARC of 20% for pavements and granular coarse or embankments. PD-20.2 Points will be earned for using cold-in-place recycling for 100% of the main lanes. PD-20.3 The maximum will be earned for reusing at least 90% of minor structural elements associated with the existing bridge, including lighting and sign structures.
144	INVEST Scoring Manual, pg 50	The overall design used in the flexible pavement designs was 30 years and the results met or exceeded the design life. In addition, with proper maintenance, the pavement designs can be a "perpetual pavement," which has the potential to perform well beyond the 30 year design life.
145	INVEST Scoring Manual, pg 53	Warm Mix Asphalt (WMA) will be used for at least 50% of the total pavement material (by weight). After award of the Project, specific details for sustainable cement sourcing and production will be explored.
146	INVEST Scoring Manual, pg 57	An Environmental Compliance and Mitigation Plan (ECMP) will be established, implemented, and maintained for the Project. This will include commitments for an air emissions control plan, including the consideration of construction equipment emission.
147	INVEST Scoring Manual, pg 59	An Environmental Compliance and Mitigation Plan (ECMP) will be established, implemented, and maintained for the Project. The ECMP will include a formal Noise Mitigation Plan (NMP). The NMP will include commitments for construction noise mitigation measures, triggers for initiating mitigation measures, and a system to ensure effectiveness of mitigation measures.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
148	INVEST Scoring Manual, pg 61	A Construction and Demolition Waste Management Plan (CDWMP) will be established, implemented, and maintained for the Project. The goal will be to divert at least 75% of construction waste from landfills.
149	INVEST Scoring Manual, pg 73	As required by the Technical Provisions, an Environmental Compliance Mitigation Plan (ECMP) will be included in the Maintenance Management Plan (MMP). It will be Developer's goal to exceed the requirements of this criterion. A final score will be determined after Project award to reflect the content and scope of the ECMP.
150	INVEST Scoring Manual, pg 74	The Project will use the TxDOT Pavement Management Information System (PMIS) or an equivalent system. Annual surveys will be used to monitor and address pavement conditions. It will be Developer's goal to exceed the requirements of this criterion.
151	INVEST Scoring Manual, pg 76	A Bridge Management System (BMS) will be established for the Project with the goal of exceeding the requirements. This Project will use PonTex – a BMS with inspection data developed by TxDOT.
152	INVEST Scoring Manual, pg 78	As required by the Technical Provisions, a Maintenance Management Plan (MMP) will be established, implemented, and maintained. Developer will establish a Maintenance Management System (MMS) as part of the MMP that integrates all of the systems identified. It will be a goal of the MMP to exceed the requirements of this criterion.
153	INVEST Scoring Manual, pg 82	A Traffic Management Plan (TMP) will be established, implemented, and maintained. The TMP will include, at a minimum, the items outlined in TP 18.2.1 of the RFP. It will be Developer's goal to exceed the requirements
154	INVEST Scoring Manual, pg 84	A Road Weather Management Program (RWMP) will be established for the Project. A key feature of the RWMP will be the incorporation of a Road Weather Information System (RWIS) using environmental sensor stations (ESS). This data is integrated into a public resource provided by TxDOT.
155	Aesthetic Proposal, Pg. 1 Design Approach	Developer will hold a design charette with TxDOT and community representatives to select special features of the bridge from options discussed in the Aesthetics Plan. These include 1) bridge aesthetic lighting color patterns, 2) pedestrian railing style at the belvedere and points along the shared use path of the bridge 3) color of the pedestrian hand rail 4) roadway sign structure column top details and way finding sculptures, 5) concrete texture/ pattern for abutments and noise walls.
156	Aesthetic Proposal, Pg. 2 New Harbor Bridge Design Features	Stay cable design will be a single-plane fan arrangement

Proposal Commitments

No.	Proposal Location	Proposal Commitment
157	Aesthetic Proposal, Pg. 3 Towers and Superstructure	The gradual taper of the facetted, diamond-shaped cross section from top to bottom is contemporary and graceful. As the front face of the tower tapers to the sky, the facetted edges meet in a point, which is reminiscent of a spire.
158	Aesthetic Proposal, Pg. 4 Approach Bridges	Box Girders will be used on Approach Bridges.
159	Aesthetic Proposal, Pg. 4 Approach Bridges	Constant depth pier cap and superstructure specified, both approximately 10'-1"
160	Aesthetic Proposal, Pg. 4 Approach Bridges	Box girder web and pier cap share a similar angle for a smooth transition between superstructure.
161	Aesthetic Proposal, Pg. 4 Approach Bridges	Vertical recesses in approach bridge piers.
162	Aesthetic Proposal, Pg. 4 Approach Bridges	Smooth texture of concrete with opaque sealer is applied to exterior concrete surfaces.
163	Aesthetic Proposal, Pg. 5 SUP Belvedere	Bench will provide both east and west facing views
164	Aesthetic Proposal, Pg. 5 SUP Belvedere	Central sculpture with metal paneled star gazing map with laser cut constellations. Metal panels are powder coated.
165	Aesthetic Proposal, Pg. 5 SUP Belvedere	Central sculpture is framed with LED lights. Bench composed of eco-friendly recycled composite material.
166	Aesthetic Proposal, Pg. 5 SUP Belvedere	No fewer than two telescopes for "bird watching and sky viewing". Therefore must have vertical and horizontal range of motion.
167	Aesthetic Proposal, Pg. 5 SUP Belvedere	Bike racks near belvedere.
168	Aesthetic Proposal, Pg. 5 SUP Belvedere	No fewer than three educational plaques.
169	Aesthetic Proposal, Pg. 5 SUP Belvedere	SUP top rail houses a linear LED light for pathway illumination. A choice of rail color within the project color palette will be offered at the design charette.
170	Aesthetic Proposal, Pg. 5 SUP Belvedere	Bridge railing and panel options will be presented at a design charette to determine community preferences.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
171	Aesthetic Proposal, Pg. 5 SUP Belvedere	Brushed concrete finish simulating a sand pathway as the surface of the SUP.
172	Aesthetic Proposal, Pg. 9 Aesthetic Lighting	Tower Crown - Direct-view, linear RGB LED color addressable light tubes are arrayed horizontally at the top of the tower to provide a low-resolution screen.
173	Aesthetic Proposal, Pg. 9 Aesthetic Lighting	Tower - High output RGB LED color addressable precision floodlights hold tightly to the tower surface at the deck and extend light upward and downward
174	Aesthetic Proposal, Pg. 9 Aesthetic Lighting	Cable Stays - The cables are lit from their bases with tightly controlled precision LED accent lights. A RGB LED luminaire will provide elegant grazing light along its shaft. Normally white and elegant in their presentation, addressable color cues will allow the cables to become a part of the special lighting presentations for the bridge.
175	Aesthetic Proposal, Pg. 9 Aesthetic Lighting	Superstructure fascia - The delta frames that tie together the cable stay junction points are accentuated using direct-view, linear RGB LED color addressable light tubes. These strong, crisp lines visually modulate the bridge underside, reinforcing the attachment points above, even when not in view from below. Companion RGB LED uplights concealed above the trusses' bottom chord softens the deck's underside, reducing the contrast between it and the direct view source. When desired, the independently addressable LED elements will permit beautiful color washes across the deck's underside fascia, providing a subtle cross-fading visual dynamic from many surrounding vantage points.
176	Aesthetic Proposal, Pg. 10 Roadway and SUP Lighting	Roadway Lighting - Will use Philips Roadstar fixtures.
177	Aesthetic Proposal, Pg. 10 Roadway and SUP Lighting	Pedestrian lighting - 12 inch long white-light LED precision wash lights are integrated into the fence mounted rail adjacent to the walkway.
178	Aesthetic Proposal, Pg. 16 Staples St. Pedestrian Crossing	The new N. Staples Street Bridge will utilize the recycled overhead steel arch structure, including light fixtures, from the existing N. Alameda St Bridge. Similar fencing designs to the new Harbor Bridge – a simple 2" square wire grid with a contemporary, frame-like concept – will be used along the new N. Staples Street Bridge.
179	Aesthetic Proposal, Pg. 16 Roadway Bridges	Single column facetted piers are designed to be in the same family and style as the main cable-stayed bridge approach piers. The caps are flared and connected to the superstructure with facetted exterior cheek walls that mask the transition joint between companion spans.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
180	Aesthetic Proposal, Pg. 17 Overhead Roadway Signage	Thematic panels provide an artistic sculptural beacon that indicates directional way finding. Multiple designs reflecting key destinations such as – Port of Corpus Christi, SEA District, Downtown, North Beach and Harbor Bridge – will be prepared for determining preferences at a design charette.
181	Aesthetic Proposal, Pg. 17 Overhead Roadway Signage	The overall concrete column color and texture will use the same opaque sealer consistent on all concrete surfaces.
182	Aesthetic Proposal, Pg. 18 Enhanced Rip Rap	Provide eight graphic pattern options as indicated for concrete panels that are consistent with fence panels.
183	Aesthetic Proposal, Pg. 18 Enhanced Rip Rap	Select locations of enhanced rip rap will be used in highly visible areas to complement the overall aesthetic theme of the project corridor. Treatment will include an exposed aggregate finish that is reminiscent of the texture of beach sand.
184	Aesthetic Proposal, Pg. 19 Landscaping & Connectivity	Provide three landscape/community connectivity focus areas as indicated in the Aesthetic proposal at I-37/US 181 intersection, I-37 at Broadway Boulevard, and the Broadway Boulevard median. The landscape design will complement all aspects of mobility – automobile, transit, and pedestrian – to enhance community connectivity, and will: • Create landscaped gateways, • Connect community parks, • Complement the City's mobility plan • Connect the community • Enhance the City's "Sense of Place" • Provide community recreation areas for local neighborhoods • Provide safe and attractive entrance/exit locations for the shared use path • Utilize xeriscape native vegetation • Celebrate the movement of nature seen in waves, animal life, and wind through the sweeping forms of plants, benches, and walls. • Integrate local streets into the landscape
185	Aesthetic Proposal, Pg. 20 Sustainability	Solar lane markers with LED lighting. Solar Pavers with LED lighting. Energy generating wind sculpture. Recycled plastic composite benches.
186	Aesthetic Proposal, Pg. 20 Sustainability	Reuse of Concrete - recycled crushed concrete as landscape accent, wall accents with recycled slabs, paving accents.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
187	Aesthetic Proposal, Pg. 20 Northbound Bridge/SUP Gateway	Solar lane markers with LED lighting on bridge marks distances traveled. Bike racks. Landscaping with recycled crushed, stained concrete. Recycled crushed concrete shaped band with blue eco-stain with nanotechnology that cleans the air.
188	Aesthetic Proposal, Pg. 20 North and South SUP Access Points	Trail map. Bike rack. Concrete traffic barrier planter.
189	Aesthetic Proposal, Pg. 20 Community Plaza	Xeriscape plantings. Energy generating wind sculpture, wind harp, water feature, thematic bike rack spells "Corpus Christi". Solar brick paver accents with LED lights.
190	ATC#9 Clarification Letter dated 11/17/2014	The proposed concrete cover for the deck is 2 inches.
191	ATC#9 Clarification Letter dated 11/17/2014	As an additional level of protection, this proposal includes using a 1/2" monolithic concrete deck protection system. This system consists of 2 $^1/_2$" of high-quality concrete with a dense mix design throughout the slab, including above the top map of reinforcing steel that is cast monolithically with the superstructure. The upper 1/2" of concrete can be removed and replaced. The 1/2" monolithic wearing surface would be neglected from the calculated section properties. The segmental deck will be post-tensioned both longitudinally and transversely to provide an additional level of compressive protection along with the dense concrete mix in the deck.
192	ATC#9 Clarification Letter dated 11/17/2014	The 1/2" of monolithic, dense concrete mix provides a protection system that can be expected to protect the deck as long, or longer than a quality thin bonded conventional concrete overlay. At 50 years or beyond, for example, if the top 1/2" of integral concrete contains sufficient chlorides to warrant renewal and replacement, the deck can be milled and a replacement dense concrete overlay can be placed at that time. However, because of the low permeability and compressive state of stress of the top slab, it is reasonable to expect that the monolithic concrete would not contain sufficient chloride ions to warrant removal for more than 75 years. The monolithic concrete overlay protection system has the lowest risk of problems since the concrete is cast with the segments as they are fabricated. This monolithically placed and protected deck surface avoids the delamination and cracking issues that could result from the use of secondarily applied overlays.
193	ATC#9 Clarification Letter dated 11/21/2014	Flatiron/Dragados will match-cast segments.

Proposal Commitments

No.	Proposal Location	Proposal Commitment
194	ATC#9 Clarification Letter dated 11/21/2014	An additional 1/2" of non-structural concrete will be cast with the segment to allow for milling the deck to provide any necessary ride quality adjustments. This is 2 1/2" of cover plus 1/2" for ride quality adjustment equaling 3" total placed during precasting of the match cast segments. The geometry and finishing in the precast yard will be monitored to provide an excellent quality of precast deck. The allowance for milling is only intended to be a backup plan.
195	Clarification Letter dated 4/9/2015	The superstructure box girders will include drain holes through the bottom soffit in every segment (maximum spacing of ten feet) near both webs. The holes will also be placed on the uphill side of all diaphragms and anchor blocks cast into the bottom slab. These drain holes allow any water that might leak in the superstructure to rapidly drain out from inside the box girder. In addition, the bottom soffit is discontinuous at expansion joints, which allows any remaining water from a leak to drain out of the superstructure. There is reserve capacity in the box section to account for any localized ponding of water that may leak inside of the box girder before it flows out through the drain holes.
196	Clarification Letter dated 4/9/2015	The drainage pipes will be routed only where necessary to the inside of the box girder until they can be run vertically down along the nearest available pier.
197	Clarification Letter dated 4/9/2015	No third-party utility conduits will be placed in the precast superstructure box segments.
198	Clarification Letter dated 4/9/2015	The long, horizontally curved ramp spans necessitated the selective use of structural steel girders to span over the underlying roadways and utilities. Steel girder structures will utilize dapped ends with depths similar to those for the adjacent precast TxDOT beams to maintain visual continuity of beam lines. These 12 spans are the only locations on the entire Project with structural steel girders. The structural steel vertical dimensions are being thoughtfully integrated into the visual integrity of the adjacent spans.
199	Clarification Letter dated 4/9/2015	For the Culbertson ditch as well as other drainage structures within the O&M limits, Developer's Performance inspections will occur at least every 6 months.

Appendix 2 to Exhibit 2

The following table lists Developer's alternative technical concepts (ATCs), as well as approved ATCs of unsuccessful Proposers, which are described in further detail in the ATC submittals and clarifications, that Developer has committed to incorporate into the Project, subject only to satisfaction of any conditions set forth in the ATC response letters from TxDOT to Developer or the unsuccessful Proposer (the "Conditions"). The Deviations set forth in the ATC submittals, including any clarifications, are approved by TxDOT subject to satisfaction of the Conditions. Such Deviations, subject to satisfaction of the Conditions, expressly supersede any conflicting provisions in the Technical Provisions, as provided in Section 1.3 of the Comprehensive Development Agreement. The design intent of ATC 203, 207, 402A, 409, and 410 are accomplished through the Interchange Design as detailed in the Technical Provisions. The ATCs, to the extent utilized by Developer, shall otherwise meet all requirements of the Technical Provisions.

ATC No.	Brief Description	Date ATC Initially Submitted to TxDOT	Date(s) of Clarification(s) submitted to TxDOT re ATC	Date ATC Approval Letter
101	ATC #101 uses epoxy coated strands as an integral component of the Cable Stay Cradle system, in accordance with ASTM A 882.	9/29/2014	10/9/2014	10/24/2014
103	ATC #103 removes the braided ramp on southbound US 181 near Burleson Street by shifting the Beach Street to US 181 southbound entrance ramp southward and shortening the US 181 to Burleson Street southbound exit ramp, while maintaining a 1,000 foot distance from the painted nose gore of the southbound Burleson Street exit ramp to the painted nose gore of the southbound Beach Street entrance ramp.	11/6/2014	11/17/2014	12/16/2014
109	ATC #109 uses an integral concrete wearing surface to eliminate Separate Wearing Surface on the deck slab for a precast concrete segmental structure type. The precast segments shall be fabricated utilizing low-permeability concrete, 2 inches of minimum cover for the top of the deck slab and a deck slab that is	11/6/2014	11/21/2014	12/3/2014

	post-tensioned in both directions. For bridges with integral concrete wearing surfaces, the maximum tensile stress shall not exceed 0.0948 times the square root of the design concrete compressive strength (in ksi).			
216	ATC #216 uses a ¾ inch Ultra-Thin Bonded Hot Mix Wearing Course (UTBHMWC), which meets or exceeds both functional and structural TxDOT performance requirements. Furthermore, the UTBHMWC will provide a uniform surface that will readily permit lane configurations by eliminating existing pavement joints and remnant pavement markings. When using UTBHMWC, a minimum thickness of 3 inches of HMA with a binder grade of PG 70-22 below the UTBHMWC will be required. The bottom of the UTBHMWC shall be above the lip of gutter elevation when curb and gutter is present.	11/6/2014	11/17/2014	12/3/2014
254	ATC #216 optimizes the typical transverse top reinforcement in cast-in-place concrete decks placed over precast concrete deck panels, from the current standard design of #5 bars at 6-in. spacing, to #4 bars at the same spacing. Longitudinal top reinforcement would remain the same as the current standard design - #4 bars at 9-in. spacing.	11/6/2014	11/17/2014	12/3/2014
303	ATC #303 allows a varied height of multiple adjacent overhead signs	9/29/2014	10/9/2014	10/24/2014
Interchange Design	The Interchange Design is a modification of the I-37/SH 286/US 181 Interchange as shown in the Schematic Design. The main modification is a continuation of the 4% down grade slope of US 181 from Station 1136+50 southwardly until passing under eastbound and westbound I-37. This modification in the			

	interchange concept allows for a large reduction in bridge length resulting from US181 being on grade and under I-37 instead of passing over I-37. The original schematic design depicted the frontage roads at ground level, I-37 located on the second level, and US181 at the third level. In the Interchange Design, the northbound and southbound frontage roads along with US181 are located at ground level, with I-37, Leopard Street, and westbound and eastbound frontage roads located at the second level. Lowering US 181 to ground level allows for Ramps X and YY to connect with US 181 at a more advantageous elevation eliminating significant portions of ramp bridge length. A feature of the original schematic design was the “six intersection concept” with the NB Frontage Road intersecting at Leopard Street, EB Frontage Road, and WB Frontage along with the SB Frontage Road intersecting at WB Frontage, EB Frontage and Leopard Street. This concept allowed local traffic to move in any travel direction “under the interchange” through the six signalized intersections. To meet the intent of this scenario, the Interchange Design adds two cloverleaf ramps for the southbound to eastbound movement and the westbound to southbound movements along with raising the WB and EB frontage roads over US181. These design adjustments provide an improvement with continuous flow of traffic through the Interchange. Features of the Interchange alignment will also achieve the intent of five other ATCs. This includes capturing the intent of the following ATCs, with the			

	details evolving through final design: ATC 203 - combining direct connect Ramp ‘O’ and Ramp ‘U’ into a single collector-distributor exit ramp. ATC 207 - lowering the US 181 vertical profile between the main span and I-37 to reduce bridge length. ATC 402A - eliminating the triple weave at the North Port Avenue entrance ramp onto I-37. ATC 409 - combining Ramp X with the direct connect Ramp ‘L’ to reduce bridge length. ATC 410 - combining Ramp YY with the direct connect Ramp ‘K’ to reduce bridge length.			

EXHIBIT 3

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	24
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ATTACHMENT 1 TO EXHIBIT 3

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

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

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

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

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

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

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

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

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

make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

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

CONVICT PRODUCED MATERIALS

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

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

ACCESS TO RECORDS

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

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

ATTACHMENT 2 TO EXHIBIT 3

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273

[See attached.]

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor

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

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

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities

unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.
The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the

rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full

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

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

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

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

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

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

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the

contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

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

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

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

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

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

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

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

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

tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth

in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of

predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

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

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

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-

aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. **Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 3 TO EXHIBIT 3

FEDERAL PREVAILING WAGE RATE

The wage rates listed are those predetermined by the Secretary of Labor and State Statue to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-2-2015

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/2/15	ZONE TX08 1/2/15	ZONE TX11 1/2/15	ZONE TX12 1/2/15	ZONE TX14 1/2/15	ZONE TX16 1/2/15	ZONE TX18 1/2/15	ZONE TX34 1/2/15	ZONE TX35 1/2/15	ZONE TX37 1/2/15	ZONE TX38 1/2/15	ZONE TX40 1/2/15	ZONE TX41 1/2/15	ZONE TX54 1/2/15	ZONE TX56 1/2/15	ZONE TX63 1/2/15
1428	Agricultural Tractor Operator						$12.69					$12.35			$11.75		
1300	Asphalt Distributor Operator	$14.87	$13.48	$13.88			$15.55	$15.72	$13.28	$15.32	$15.62	$14.36	$14.25	$14.03	$13.75	$14.06	$14.40
1303	Asphalt Paving Machine Operator	$13.40	$12.25	$12.35	$13.87		$14.36	$14.20	$13.26	$13.99	$14.68	$12.92	$13.44	$12.53	$14.00	$14.32	$12.99
1106	Asphalt Raker	$12.28	$10.61	$12.02	$14.21		$12.12	$11.64	$11.44	$12.69	$12.05	$11.34	$11.67	$11.40	$12.59	$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	$11.21	$10.33	$10.10			$11.04	$11.62		$11.74	$11.41	$10.30		$10.23	$10.60	$12.68	$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	$13.55	$12.46	$13.16	$12.85		$12.56	$12.77	$12.44	$14.12	$13.04	$13.38		$12.80	$12.79	$12.98	$13.32
1318	Concrete Pavement Finishing Machine Operator						$15.48			$16.05		$19.31				$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											$16.34				$11.71	
1333	Concrete Saw Operator									$14.48	$17.33					$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						$18.36			$18.12	$18.04	$20.21			$18.63	$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	$16.82	$14.39	$13.85			$15.87			$17.27		$14.67			$16.42	$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						$19.38			$20.52		$17.49			$25.13	$15.80	
1306	Crawler Tractor Operator	$13.96	$16.63	$13.62			$15.67			$14.07	$13.15	$13.38			$14.60	$13.68	$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						$11.67										
1445	Directional Drilling Operator						$17.24										
1139	Electrician	$20.96		$19.87			$26.35		$20.27	$19.80		$20.92				$27.11	
1347	Excavator Operator, 50,000 pounds or less	$13.46	$12.56	$13.67			$12.88	$14.38	$13.49	$17.19		$13.88			$14.09	$12.71	$14.42
1348	Excavator Operator, Over 50,000 pounds		$15.23	$13.52			$17.71			$16.99	$18.80	$16.22				$14.53	
1150	Flagger	$10.10	$10.10	$10.10		$10.10	$10.10	$10.10		$10.10	$10.10	$10.10		$10.10	$10.10	$10.33	$10.10
1151	Form Builder/Setter, Structures	$13.52	$12.30	$13.38	$12.91	$12.71	$12.87	$12.38	$12.26	$13.84	$12.98	$13.07	$13.61	$12.82	$14.73	$12.23	$12.25
1160	Form Setter, Paving & Curb	$12.36	$12.16	$13.93	$11.83	$10.71	$12.94			$13.16	$12.54	$11.33	$10.69		$13.33	$12.34	
1360	Foundation Drill Operator, Crawler Mounted									$17.99						$17.43	
1363	Foundation Drill Operator, Truck Mounted		$16.86	$22.05			$16.93			$21.07	$20.20	$20.76		$17.54	$21.39	$15.89	

1369	Front End Loader Operator, 3 CY or Less	$12.28	$13.49	$13.40			$13.04	$13.15	$13.29	$13.69	$12.64	$12.89			$13.51	$13.32	$12.17
1372	Front End Loader Operator, Over 3 CY	$12.77	$13.69	$12.33			$13.21	$12.86	$13.57	$14.72	$13.75	$12.32			$13.19	$13.17	
1329	Joint Sealer																
1172	Laborer, Common	$10.30	$10.10	$10.10	$10.51	$10.71	$10.50	$10.24	$10.58	$10.72	$10.45	$10.30	$10.25	$10.10	$10.54	$11.02	$10.15
1175	Laborer, Utility	$11.80	$11.53	$12.70	$12.17	$11.81	$12.27	$12.11	$11.33	$12.32	$11.80	$11.53	$11.23	$11.50	$11.95	$11.73	$12.37
1346	Loader/Backhoe Operator	$14.18	$12.77	$12.97	$15.68		$14.12			$15.18	$13.58	$12.87		$13.21	$14.13	$14.29	

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/2/15	ZONE TX08 1/2/15	ZONE TX11 1/2/15	ZONE TX12 1/2/15	ZONE TX14 1/2/15	ZONE TX16 1/2/15	ZONE TX18 1/2/15	ZONE TX34 1/2/15	ZONE TX35 1/2/15	ZONE TX37 1/2/15	ZONE TX38 1/2/15	ZONE TX40 1/2/15	ZONE TX41 1/2/15	ZONE TX54 1/2/15	ZONE TX56 1/2/15	ZONE TX63 1/2/15
1187	Mechanic	$20.14	$15.47	$17.47			$17.10			$17.68	$18.94	$18.58		$16.61	$18.46	$16.96	
1380	Milling Machine Operator	$15.54	$14.64	$12.22			$14.18			$14.32	$14.35	$12.86			$14.75	$13.53	
1390	Motor Grader Operator, Fine Grade	$17.49	$16.52	$16.88			$18.51	$16.69	$16.13	$17.19	$18.35	$17.07	$17.74	$17.47	$17.08	$15.69	$20.01
1393	Motor Grader Operator, Rough	$16.15	$14.62	$15.83		$17.07	$14.63	$18.50		$16.02	$16.44	$15.12		$14.47	$17.39	$14.23	$15.53
1413	Off Road Hauler			$10.10			$11.88			$12.25		$12.23			$13.00	$14.60	
1196	Painter, Structures						$18.34						$21.29			$18.62	
1396	Pavement Marking Machine Operator	$16.42		$13.10			$19.17	$12.01		$13.63	$14.60	$13.17		$16.65	$10.54	$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															$14.95	
1205	Pipelayer		$11.87	$14.64			$12.79		$11.37	$13.24	$12.66	$13.24	$11.17	$11.67		$12.12	
1384	Reclaimer/Pulverizer Operator	$12.85					$12.88			$11.01		$10.46					
1500	Reinforcing Steel Worker	$13.50	$14.07	$17.53			$14.00			$16.18	$12.74	$15.83		$17.10		$15.15	
1402	Roller Operator, Asphalt	$10.95		$11.96			$12.78	$11.61		$13.08	$12.36	$11.68			$11.71	$11.95	$11.50
1405	Roller Operator, Other	$10.36		$10.44			$10.50	$11.64		$11.51	$10.59	$10.30		$12.04	$12.85	$11.57	
1411	Scraper Operator	$10.61	$11.07	$10.85			$12.27		$11.12	$12.96	$11.88	$12.43		$11.22	$13.95	$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	$13.98	$12.34	$14.11			$14.51	$15.56	$13.44	$14.58	$14.31	$13.83		$12.43	$13.72	$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									$15.96							
1515	Spreader Box Operator	$12.60		$13.12			$14.04			$14.73	$13.84	$13.68		$13.45	$11.83	$13.58	
1705	Structural Steel Welder															$12.85	
1509	Structural Steel Worker						$19.29									$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						$16.00										
1440	Trenching Machine Operator, Heavy						$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	$14.46	$13.63	$13.41	$15.00	$15.93	$15.66			$16.24	$16.39	$14.30	$16.62	$15.63	$14.28	$16.03	
1612	Truck Driver Transit-Mix									$14.14							
1600	Truck Driver, Single Axle	$12.74	$10.82	$10.75			$11.79	$13.53	$13.16	$12.31	$13.40	$10.30	$11.61		$11.97	$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	$11.33	$14.53	$11.95			$11.68		$14.06	$12.62	$11.45	$12.28		$13.08	$11.68	$11.48	$11.10

1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	$12.49	$12.12	$12.50			$12.81	$13.16		$12.86	$16.22	$12.50			$13.80	$12.27	
1441	Tunneling Machine Operator, Heavy																
1442	Tunneling Machine Operator, Light																
1706	Welder		$14.02				$15.97		$13.74	$14.84					$13.78		
1520	Work Zone Barricade Servicer	$10.30	$12.88	$11.46	$11.70		$11.85	$10.77		$11.68	$12.20	$11.22	$11.51	$12.96	$10.54	$11.67	

Notes:

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week.

The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.

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

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

Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38
Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

ATTACHMENT 4 TO EXHIBIT 3

SPECIAL PROVISION

000---006

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

1. As used in these specifications:

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

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

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

   d. "Minority" includes:

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

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

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

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

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

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or

through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

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

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

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

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

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's

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

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

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

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

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

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

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory

personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

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

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

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

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

ATTACHMENT 5 TO EXHIBIT 3

SPECIAL PROVISION

000---004

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

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

2. **Goals.**

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

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

Goals for minority participation in each trade (per-cent)	Goals for female participation in each trade (per-cent)
See Table 1	6.9

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

Compliance with the goals will be measured against the total work hours performed.

d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

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

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

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

Table 1

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

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

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

ATTACHMENT 6 TO EXHIBIT 3

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

ATTACHMENT 7 TO EXHIBIT 3

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

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

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

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

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

BUY AMERICA CERTIFICATE

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

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

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

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

DEVELOPER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

ATTACHMENT 8 TO EXHIBIT 3

2004 Specifications

SPECIAL PROVISION

000---009

Certification of Nondiscrimination in Employment

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

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

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

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

ATTACHMENT 9 TO EXHIBIT 3

SPECIAL PROVISION

000--____

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

This training special provision is the Department's implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of Developer's equal employment opportunity affirmative action program, training shall be provided as follows:

1. The Developer shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.

2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R.§230.111:

   1) Dollar value of the construction services contract;
   2) Duration of the construction work activity;
   3) Geographic location;
   4) Availability of minorities, women, and disadvantaged for training;
   5) The potential for effective training;
   6) Type of work;
   7) Total normal work force that the average proposer could be expected to use;
   8) The need for additional journeymen in the area;
   9) Recognition of the suggested minimum goal for the State; and
   10) A satisfactory ratio of trainees to journeymen expected to be on Developer's work force during normal operations.

Construction Cost Estimate		
From	**To**	**Trainees**
$0	$9,999,999.99	0
$10,000,000	$19,999,999.99	1
$20,000,000	$39,999,999.99	2
$40,000,000	$59,999,999.99	3
$60,000,000	$79,999,999.99	4
$80,000,000	$99,999,999.99	5
$100,000,000	$119,999,999.99	6
Thereafter for each increment of $20 million, goal is increased by one trainee		

3. The OJT program trainee goal for this project is 41 trainees.

4. The Developer will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.

5. In the event that Developer subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The Developer should insure that this training special provision is made applicable to such subcontract. However, Developer shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

6. The Developer shall make every effort to ensure minorities and women are enrolled and trained in the program. The Developer shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.

7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of Developer and aims to train and upgrade employees to journey worker status.

9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.

10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

11. The number of trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journey worker in the various classifications.

12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The Developer may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, Developer's records should document the findings in each case.

13. At or before contract execution, Developer must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how Developer intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.

14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.

15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

16. The OCR must approve all proposed apprentices and trainees before training begins. The Developer must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. The Developer shall provide each trainee with a copy of the training program he or she will follow.

17. On a monthly basis, Developer shall submit the Federal OJT Monthly Reporting Form to the Department's Strategic Projects office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, Developer is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

18. The Developer shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

19. If requested, Developer may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless of whether Developer receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit Developer from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to Developer if the trainees are concurrently employed on a federal-aid project and when Developer: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to Developer if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by Developer and evidences a lack of good faith on the part of Developer in meeting the requirements of this Training Special Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

ATTACHMENT 10 TO EXHIBIT 3

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

SPECIAL PROVISION

000---2711

Important Notice to Contractors

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

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

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

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

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

EXHIBIT 4

TXDOT-PROVIDED APPROVALS

1. *Final Environmental Impact Statement issued by FHWA for the Project in November 2014, as revised by the Record of Decision issued by FHWA for the Project

2. US Corps of Engineers – Section 404 of the Clean Water Act Nation Wide Permit No. 14 or Individual Permit, based on the Schematic Design and Schematic ROW

3. US Coast Guard – Section 9 of the Rivers and Harbors Act Bridge Permit, based on the Schematic Design and Schematic ROW

4. Re-evaluation of the Record of Decision to be approved by FHWA, modifying the design to address Option 2 as described by Developer's final approved schematic drawings for Option 2

*[Dates to be updated upon receipt of final approval.]

EXHIBIT 5-1

MAXIMUM D&C PAYMENT SCHEDULE

Total Maximum D&C Payment Schedule
(all figures are in nominal U.S. dollars)

Payments up to Substantial Completion Date	
Months after NTP 1	**Maximum Allowable Cumulative Draw**
1	$24,068,921.26
2	$6,069,540.69
3	$6,069,540.69
4	$24,180,980.20
5	$8,222,015.09
6	$8,222,015.09
7	$10,170,370.76
8	$50,364,342.72
9	$10,763,489.10
10	$15,308,822.20
11	$15,012,263.03
12	$16,579,559.20
13	$19,016,334.58
14	$13,869,141.19
15	$13,869,141.19
16	$34,219,378.83
17	$13,296,494.61
18	$15,841,262.04
19	$15,841,262.04
20	$15,841,262.04
21	$15,841,262.04
22	$16,242,793.28
23	$17,930,461.48
24	$17,930,461.48
25	$17,930,461.48
26	$17,930,461.48
27	$16,242,793.28
28	$15,841,262.04
29	$14,535,257.93
30	$13,561,080.04

Payments up to Phase 2 Substantial Completion Date	
Months after NTP 1	**Maximum Allowable Cumulative Draw / Cash Flow**
31	$13,561,080.04
32	$13,561,080.04
33	$13,561,080.04
34	$13,485,740.53
35	$13,485,740.53
36	$15,469,967.90
37	$15,469,967.90
38	$15,469,967.90
39	$13,782,299.70
40	$13,380,768.44
41	$13,380,768.44
42	$13,380,768.44
43	$13,380,768.44
44	$13,380,768.44
45	$13,084,209.27
46	$13,410,401.02
47	$13,410,401.02
48	$12,922,237.52
49	$11,747,294.05
50	$9,202,526.62
51	$10,890,194.82
52	$2,666,243.43
53	$2,666,243.43
54	$2,666,243.43
55	$2,666,243.43
56	$2,013,859.94
57	$2,013,859.94
58	$2,013,859.94
59	$2,013,859.94
60	$2,013,859.94
61	$2,013,859.95

EXHIBIT 5-2

OPTION WORK PAYMENT SCHEDULE

(all figures are in nominal U.S. dollars)

Payments up to Phase 2 Substantial Completion Date	
Months after NTP 1	**Maximum Allowable Cumulative Draw for Option Work**
1	$185,447.86
2	$71,606.02
3	$71,606.02
4	$242,083.57
5	$93,212.76
6	$93,212.76
7	$93,212.76
8	$486,237.83
9	$134,908.86
10	$140,113.93
11	$119,265.88
12	$160,961.98
13	$121,961.98
14	$105,449.71
15	$105,449.71
16	$296,743.30
17	$110,654.79
18	$110,654.79
19	$110,654.79
20	$110,654.79
21	$110,654.79
22	$115,859.87
23	$149,410.61
24	$149,410.61
25	$149,410.61
26	$149,410.61
27	$115,859.87
28	$110,654.79
29	$96,094.79
30	$96,094.79

Payments up to Phase 2 Substantial Completion Date	
Months after NTP 1	**Maximum Allowable Draw**
31	$96,094.79
32	$96,094.79
33	$96,094.79
34	$106,983.46
35	$106,983.46
36	$161,382.25
37	$161,382.25
38	$161,382.25
39	$127,831.51
40	$122,626.43
41	$122,626.43
42	$122,626.43
43	$122,626.43
44	$122,626.43
45	$101,778.39
46	$117,872.14
47	$117,872.14
48	$117,872.14
49	$115,269.60
50	$115,269.60
51	$148,820.34
52	$81,831.99
53	$81,831.99
54	$81,831.99
55	$81,831.99
56	$49,644.49
57	$49,644.49
58	$49,644.49
59	$49,644.49
60	$49,644.49
61	$49,644.49

EXHIBIT 6

DBE SPECIAL PROVISIONS

FOR NON-TRADITIONAL CONTRACTS

000---___

Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts

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

Article A. Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts

1. Policy. In the performance of this Agreement Developer shall comply with 49 CFR Part 26, the Department's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended. For a conflict between the language of this Special Provision and 49 CFR Part 26, the Department's DBE Program, or 43 Texas Administration Code, Chapter 9, Sections 9.200 – 9.242, as amended, 49 CFR Part 26, the Department's DBE Program, or 43 TAC, Chapter 9, Sections 9.200 – 9.242 as applicable, shall control**.**

a. Developer, its Contractor and subcontractors must meet the DBE goal set out in the Agreement by obtaining commitments from eligible DBEs or Developer must show acceptable evidence of Good Faith Efforts to meet the DBE goal.

b. The Developer shall solicit DBEs through reasonable and available means.

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

d. The Developer will include this Special Provision in all Contracts entered into by Developer. The Developer will also require any Contractor to include this Special Provision in any Contract that the Contractor enters into under this Agreement.

e. By signing this Agreement Developer certifies that the DBE goal as stated in the Agreement will be met by obtaining commitments from eligible DBEs or that Developer will provide acceptable evidence of good faith effort to meet the commitment within the time frame set out below.

2. Definitions. The definition for terms used in this Provision can be found in Exhibit 1 of this Agreement, 49 CFR, Part 26 or 43 TAC §9.202, Definitions. Terms not defined in Exhibit 1 of this Agreement, 49 CFR, Part 26, or 43 TAC §9.202 will for the purpose of this Special Provision be defined by the term's common usage.

3. Developer's Responsibilities. These requirements must be satisfied by Developer. Failure of Developer to meet these requirements may result in the issuance of Sanctions by the Department.

a. The Developer shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Agreement, including Developer's exercise of good faith efforts. The selected Developer's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Agreement. Each DBE Performance Plan must at a minimum include the following: specific categories of services and work anticipated for DBE participation on the project; schedule for submission of DBE commitment agreements based on Developer's initial project schedule; good faith efforts performed to date; good faith efforts that will be exercised by Developer following execution of the Agreement to achieve the DBE participation goal for the project; and the name, qualifications, responsibilities and contact information for the DBE liaison officer. The Developer shall also submit the completed Non-Traditional Contract form for the applicable type of commitment for each DBE that will be used to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department not later than 5:00 p.m. on the 30th business day, excluding national holidays, after

the conditional award of this Agreement. The DBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement.

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

c. The Developer shall designate a DBE liaison officer who will administer Developer's DBE program and who will be responsible for all aspects of Developer's DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues.

d. A Developer who cannot meet the Agreement goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

e. The Developer and Contractors shall not terminate a DBE without written consent of the Department. The Developer must comply with 49 CFR §26 and 43 TAC §9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. This includes written notification to the DBE and the Department and providing the DBE five days in which to respond to Developer's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if Developer or Contractor cannot demonstrate that the provisions of 49 CFR §26.53 and 43 TAC §9.229, DBE Substitutions and Terminations, have been followed. Terminating a DBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

f. If the Department approves the termination of the DBE Contractor, Developer or Contractor shall make a good faith effort to replace the terminated DBE Contractor with another DBE, to the extent needed to meet the Agreement goal. The Developer shall submit the applicable Non-Traditional Contract commitment form for the substitute DBE firm(s). The Developer may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

4. Eligibility of DBEs.

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

b. Only DBE firms certified at the time the commitments are submitted are eligible to be included in the information furnished by Developer as required under this Special Provision.

c. For purposes of the DBE goal on this project, DBEs are only allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a Contract or subcontract are eligible for DBE goal participation.

5. Determination of DBE Participation.

When a DBE participates in a Contract, only the values of the work actually performed by the DBE, as detailed in 49 CFR §26.55, 43 TAC §9.231, Computing Work Performed by a DBE, 43 TAC §9.232, Commercially Useful Function, 43 TAC §9.233, Commercially Useful Function by DBE Trucking Firm, and 43 TAC §9.234, Counting Materials or Supplies Provided by DBE Manufacturer or Regular Dealer, shall be counted by Developer toward the DBE goal.

6. Records and Reports.

a. The Developer shall submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE Contracting or material supply activity is completed.

b. The Developer shall submit a final summary report of DBE payments upon completion of the project. The Developer will not receive final payment until this final report has been received and approved by the Department. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.

c. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

d. Negative reports are required when no activity has occurred in a monthly period.

e. The Developer shall provide copies of Contracts or agreements and other documentation upon request.

f. The Developer must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the project.

g. A copy of all reports submitted to the department and all supporting documentation must be retained for a period of 3 years following completion of the Contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT.

7. Compliance of Developer.

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

b. The Developer shall receive credit toward the DBE goal based on actual payments to the DBE Contractor. The Developer shall notify the Department if Developer withholds or reduces payment to any DBE Contractor. The Developer shall submit an affidavit detailing the DBE Contract payments prior to receiving final payment for this Agreement.

c. The Developer's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or seek sanctions under 43 TAC §9.237, Determination of Noncompliance; Sanctions.

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

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

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

EXHIBIT 7

DEVELOPER'S DBE PERFORMANCE PLAN

Disadvantaged Business Enterprise (DBE) Performance Plan

Texas Department of Transportation Comprehensive Development Agreement

US 181 Harbor Bridge Replacement Project

by

Flatiron/Dragados JV

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PREFACE

This DBE Performance Plan, together with appendices, is submitted as an individual Disadvantaged Business Enterprise (DBE) Plan to describe the approach of Flatiron/Dragados JV (FDJV or the Design-Build Contractor) to meet the required DBE participation goals for the design and construction work. The intent of this plan is to address the applicable requirements in TxDOT's Disadvantaged Business Enterprise (DBE) Program adopted pursuant to 49 CFR Part 26, 43 Texas Administrative Code (TAC), Chapter 9, Sections 9.200 -9.242, Instruction to Proposers (ITP) Section 1.8.2 published by Texas Department of Transportation (TxDOT), Comprehensive Development Agreement (CDA or the Contract) Section 7.1, and US 181 Harbor Bridge Replacement Project in Corpus Christi District, Addendum #06 to Request for Proposals dated March 17, 2015.

This plan includes a system of procedures that will document adjustments and maintenance of the DBE participation schedule, achievement of the Project's DBE goal, utilization of DBE firms, and procedures to document good faith efforts in compliance with the CDA Documents, and all other diversity and inclusion objectives of the Contract.

GOAL

The approved overall DBE participation goal for the Project, including construction and professional services, is established as 9% of the D&C Price. This percentage goal is established to reflect the Developer's good faith effort to employ Disadvantaged Business Enterprises (DBEs) whenever possible in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26.

1. Introduction

The objective of this document is to describe the approach to meet the required goals and objectives regarding the utilization of Disadvantaged Business Enterprise (DBE) firms for the US 181 Harbor Bridge Toll Lanes Design-Build Project. For a detailed approach to our apprentice and on-the-job training initiatives please refer to our OJT Policy and Procedure Plan which outlines our commitment to labor compliance.

2. Scope

This document addresses the utilization of Disadvantaged Business Enterprises (DBEs) under the Federal Regulations (49 CFR Part 26, as currently revised) and outlines the approach for identifying, soliciting, documenting communications, and selecting DBEs for contract and subcontract opportunities on the US 181 Harbor Bridge Replacement Project. In addition to the utilization of DBE firms, this document outlines the following:

- Methods to achieve the DBE participation goals or demonstrate good faith efforts.
- Methods to comply with DBE requirements specified in 49 CFR Part 26.
- Cross references to parts of the Project Management Plan identifying the approach to maximize participation through Final Acceptance.

- Project personnel and their roles and responsibilities.
- Approach for contracting with and managing subcontractors.
- DBE outreach program to encourage participation.
- Framework for identifying and training DBE firms.
- Reporting requirements to the Department regarding DBE participation.
- Regular updates on the progress in meeting DBE requirements.
- Required tracking efforts/corrective actions and how they will be met.
- Specific categories of services and work anticipated for DBE participation on the project.
- Schedule for submission of DBE commitment agreements based on Developer's initial project schedule.
- Good faith efforts performed to date.

3. Terms and Abbreviations

- Affirmative Action (AA)
- Commercially Useful Function (CUF)
- Disadvantaged Business Enterprise (DBE)
- Equal Employment Opportunity (EEO)
- Federal Highway Administration (FHWA)
- Good Faith Efforts (GFE)
- North American Industry Classification System (NAICS)
- Texas Department of Transportation (TxDOT or Owner)
- On-the-Job Training Program (OJT)
- Standard Form (SF)
- Flatiron/Dragados, JV, a comprised of Flatiron Constructors, Inc. and Dragados USA, Inc. (FDJV)

4. References

Federal Regulations 49 CFR Part 26 (as Amended)
FHWA Form 1273: Required Contract Provisions Federal-Aid Construction Contracts
TxDOT ITP Section 1.8.2 and CDA Section 7.1, US 181 Harbor Bridge Replacement Project in Corpus Christi District, Addendum #06 to Request for Proposals (March 17, 2015)
TxDOT's Contract / TxDOT US 181 Harbor Bridge Replacement Project Scope / Comprehensive Development Agreement
TxDOT's Project Management Plan Requirement
Flatiron/Dragados, JV Technical Proposal

5. DBE Utilization Plan Policy

Flatiron/Dragados JV (FDJV) is committed to the participation of DBEs in subcontracting and supplier opportunities in accordance with Code of Federal Regulations 49 CFR Part 26, TxDOT and the Comprehensive Development Agreement (CDA). FDJV shall take all necessary and commercially reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) have the maximum opportunity to participate in the performance of this Contract. In accordance with Good Faith Effort (GFE) provisions as defined in 49 CFR Part 26, Appendix A (Guidance Concerning GFE), FDJV will document and file all efforts exerted to achieve the DBE participation goal established for the Project. All documents and records shall be organized in a file system for review and reporting and maintained for the duration of the Project. The Commercial Department will seek to maximize DBE firm participation by soliciting opportunities to provide document control services, archiving and reporting through final acceptance as detailed in the Project Management Plan.

It is the policy of FDJV to ensure nondiscrimination on the basis of race, color, sex, religion or national origin in the award and administration of contracts and subcontracts on this project. It is our intent to create a level playing field where DBEs can compete fairly and be awarded contracts to supply materials and equipment, provide consulting services or perform as subcontractors in the field.

DBE Program

DBE provisions require that contractors and subcontractors performing work on TxDOT federally-funded projects shall adhere to the following:

6.1 Nondiscrimination

Pursuant to 49 CFR Part 26.7, FDJV and its sub-recipients shall not exclude any person from participation in, deny any person the benefits of, otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In the administration of its DBE program, FDJV and its subrecipients shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, religion or national origin.

6.2 Lead Contractor Responsibilities

As the Lead Contractor for a USDOT assisted project, FDJV is required to implement and administer a DBE program according to the requirements described in 49 CFR Part 26 for the entire duration of the project. In addition to being responsible for our own compliance to these regulations FDJV is also responsible for the compliance of our primary and lower-tier subcontractors and suppliers.

FDJV, prior to awarding subcontracts or purchase order agreements, will educate DBEs on the contractual requirements, federal requirements, and environmental requirements during pre-job meetings and targeted scope engagement meetings. At the time of executing subcontract or purchase order agreements, FDJV will discuss and review all requirements and documentation necessary with subcontractors and suppliers to ensure that DBEs fully understand that these provisions are conditions to

counting their work towards the DBE goal. FDJV shall ensure that following declarations are inserted in all Subcontractor and Supplier agreements:

- Under the provisions of the Comprehensive Development Agreement, FDJV is required to meet the specified Disadvantaged Business Enterprise ("DBE") participation in accordance with 49 CFR Part 26. Subcontractor acknowledges that all, or a portion of, the dollar amount of this Agreement may be used by FDJV to meet the specified DBE goal. Subcontractor certifies that it will perform its Work in full compliance will all Legal Requirements regarding the use, performance and participation of DBEs and that it be fully responsible for all DBE lower tier subcontractors or subconsultants. Subcontractor warrants that if it subcontracts any Work to lower tier subcontractor or subconsultant, that the lower tier subcontractor or subconsultant will be certified as a DBE under the Owner's program.

- In the event that Subcontractor or any of its lower tier subcontractors or subconsultants are certified DBEs, Subcontractor agrees all certified DBEs will perform a "commercially useful function" as defined in 49 CFR § 26.55, in connection with the Work covered by this Agreement. In doing so, Subcontractor agrees that it and/or its lower tier subcontractors or subconsultants will be responsible for and will actually perform, manage and supervise the Work covered by this Agreement. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own forces, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, FDJV must presume that it is not performing a commercially useful function.

- Subcontractor agrees to prepare and submit all lower tier subcontracts and material contracts to FDJV for approval. FDJV reserves the right to review and reject any and all sub-subcontract or sub-subconsultant agreements, purchase orders, equipment leases and/or use of other Subcontractor personnel entered into between Subcontractor and third parties that do not conform or comply with the provisions of this section, the terms of the Comprehensive Development Agreement, the CDA Documents or the requirements of the Owner or any Legal Requirements. Neither the approval of nor the failure on the part of FDJV to reject such arrangements shall relieve the Subcontractor of any of its obligations under this Agreement. In the event it is determined that the Subcontractor, or any of its lower tier subcontractors, fails to perform a "commercially useful function," due in whole to the actions of the Subcontractor, FDJV shall have the right to terminate the Agreement, without penalty or liability, and FDJV may recover from

Subcontractor any damages FDJV may suffer as a result of Subcontractor's failure to perform a "commercially useful function."

- If Subcontractor intends to subcontract any portion of the Work, either prior to or after award of the Agreement, it shall advise FDJV and ask for FDJV's approval prior to any Work being performed. Subcontractor shall provide to FDJV, on a monthly basis, documentation and a certification substantiating any Work, labor or services performed or material or equipment provided by any lower tier Subcontract, supplier, trucker, etc. Such documentation including, but not limited to, agreements, purchase orders, invoices, and proof of payments shall be a material condition of this Agreement. Subcontractor agrees to include this section in all of its subcontracts, subconsultant agreements, purchase orders and/or vendor agreements.

6.3 DBE Personnel

Flatiron/Dragados JV shall designate a DBE Liaison Officer who will administer our DBE program and shall be responsible for all aspects of the DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues. The DBE Liaison Officer will be responsible for working with the Project Executives, Commercial Department and Estimating Department to provide internal oversight for the implementation and monitoring of FDJV's DBE Utilization Plan in accordance with the contractual requirements, technical proposal, CDA, and this guidance manual. The DBE Liaison Officer shall have overall responsibility for providing oversight, management, and reporting on achievement of the DBE Goals, reviewing and communicating subcontracting opportunities, designing and implementing good faith efforts document control system, training DBEs, and ensuring commercial useful function requirements are being met for DBEs performing at all tiers. **The DBE Liaison Officer is TBD as FDJV is currently interviewing candidates to fill the position prior to NTP.**

6.3.1 Outreach to the DBE Community

The DBE Liaison Officer will work to become familiar with the DBE community in the area to specifically communicate employment opportunities, including on-the-job training opportunities, consulting opportunities, contracting opportunities, and materials supply opportunities. They shall have experience with the DBE program and dealing with DBE eligibility and certification issues. They will develop innovative and aggressive strategies to attract and retain a diverse pool of vendors, consultants, Contractors, and Suppliers for the Project's procurement opportunities, and to recruit potential DBEs eligible for certification. FDJV shall report outreach progress and results at least quarterly to the Developer. The DBE Liaison Officer shall track and report all DBEs recruited or solicited for each procurement opportunity issued by FDJV. The DBE Liaison Officer shall coordinate all outreach activities with the Department's staff and/or consultants. The DBE Liaison Officer

shall be qualified to provide oversight and participate in DBE outreach and verify the accuracy of the overall compliance monitoring and reporting for DBE program goals.

PRIMARY RESPONSIBILITIES:

- Coordinating with Purchasing personnel and the Commercial Department to identify certified, capable and available DBE firms to participate on the Project as subcontractors and vendors using the appropriate Texas Unified Certification Program (TUCP) directory of certified firms maintained by the State of Texas as the primary source to solicit DBEs.
- Placing advertisements online, in newspapers, targeted trade journals and other small business publications advising the minority subcontracting/supplier community of the opportunities to bid on the various scopes of work for the duration of the Project.
- Advising, on a regular basis, the certifying agency of any/all DBE firms whose contact information is incorrect or who could not be contacted by FDJV for bid solicitations.
- Vetting subcontractors and vendors by considering available information from various sources pertaining to past business and performance practices, including, but not limited to, integrity issues, investigations and compliance with the applicable rules and regulations, DBE certification, and consulting the State of Texas' excluded parties list of debarred or suspended firms or individuals.
- Developing and maintaining a central repository for DBE Program documents and records relating to DBE participation.
- Keeping current with DBE best practices and representing FDJV in commercial networking events and forums in an effort to increase DBE participation.
- Interfacing with Purchasing and Management in the development of the proposed project specific DBE utilization plans consistent with contract requirements and the appropriate rules and regulations.
- Meeting with project field personnel to discuss the DBE utilization plans and the applicable rules and regulations related to DBE participation at the Project.
- Monitoring DBE goals established by TxDOT for the entire life of the project. This includes meeting with the project field personnel to review DBE requirements of the contract, monitoring DBE participation in the field, provide training to all personnel participating on the Project, and to monitor the DBE performance at the project either by personal observation, by review of project documentation, and by performance of CUF evaluations.
- Responding to all applicable questions and concerns relating to a project's DBE requirements in a timely manner.
- Providing a revised DBE Utilization Plan to the Project Manager, field personnel, and/or the applicable TxDOT personnel and preparing and submitting consistent

DBE participation reports to the agency in accordance with the contract requirements.

- Alerting the Project Manager, Legal and Compliance Department of any issues or concerns regarding performance by a DBE subcontractor or vendor, particularly if the project field personnel believes that the firm may be terminated or replaced, if the situation to perform all or a portion of the designated DBE firm's work, or anyone other than the DBE firm appears to be performing the work, negating the DBEs ability to perform a CUF.
- Interfacing with appropriate agency personnel to seek their guidance, input, and suggestions regarding DBE participation on the Project.
- Developing, coordinating and conducting, as appropriate, Company-wide or Project-specific training regarding the DBE Program for Project employees and DBEs.

6.4 DBE Utilization Contract Goal

The DBE Goal for the Project during the Construction Period shall be nine percent (9%) of the Contract Amount (the "DBE Goal") and FDJV shall use good faith efforts to meet the Goal. This goal shall remain in effect throughout the life of the contract. Federally-assisted contracts have a single DBE goal. ***Only the single DBE goal applies to the project.***

6.5 Identification of DBE Firms

The Estimating/Commercial Department and DBE Liaison Officer shall work collaboratively to ensure that DBEs have the maximum practical opportunity to participate in the performance of this Project. FDJV shall take all necessary and reasonable steps to ensure that DBEs have an equal opportunity to compete for and perform work including, but not limited to, the following:

6.5.1 Public Advertisement

The DBE Liaison Officer shall research local newspapers where project service solicitations and advertisements may be posted. Leads for potential interested bidders responding to the advertisement shall be documented and logged as specified in Section 6.6 of this procedure. As detailed in the Project Management Plan, the DBE Liaison Officer will track and report DBEs that are solicited and awarded subcontracts to perform services outlined in our Communications and Public Information Plans.

6.5.2 Website / Database Search

FDJV personnel shall research Texas Unified Certification Program (TUCP) DBE Directory to identify certified DBE firms. The North American Industry Classification System (NAICS) code classifies businesses by industry type.
Below is the internet website available for locating potential DBEs using NAICS numbers:

- Texas Unified Certification Program (TUCP) DBE and TxDOT SBE Directory - https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=5937

6.5.3 Subcontractor and Supplier Certification

All interested bidders shall be DBE certified by TUCP appropriate certifying agencies. For purposes of the DBE goal on this project, DBEs are only allowed to perform work in the categories of work for which they are certified in the TUCP Directory. DBE firm certification status must be verified prior to approval of contract/subcontract agreement as specified in Section 6.5.2 of this procedure.

6.5.4 Associations / Local Resources

Contacting local associations, organizations and DBE supportive services programs can help in locating small business concerns with TUCP DBE certification. These centers can also provide information needed for developing an effective strategy for achieving the target goals. Utilization of local resource centers is one method to determine which DBE category goals are most difficult to obtain and where to locate firms in each category.

6.6 Logging and Tracking Communications with DBEs

All identified potential DBEs will be listed in FDJV's DBE Database. This database will be maintained up-to-date throughout the duration of the project and will reflect all communications with potential DBE subcontractors and vendors. Communications shall be tracked and documented in the database under the "Comments" column. Table 1 below provides an example of the minimal content to be inserted under each column of the "FDJV DBE Database."

Table 1 - Fields for Completing the FDJV DBE Database

COLUMN	DESCRIPTION OF CONTENT
NAICS	Primary applicable NAICS
Company Name	Company Name and/or DBA
DBE Status	Certified DBE
Business Description	Brief description of the capabilities of the firm
City, State, Zip	*
Contact Person	*
Phone	###-###-####
Fax	###-###-####
Email	*
Invitation to Bid Date	MM/DD/YYYY
Bidding (Y/N)	Yes or No
Comments1	Date tracking of all communications (written and spoken) and a summary of discussions.
Comments2	Communication #2
Comments3	Communication #3

* Denotes items that are self-explanatory.

6.7 General Contract / Subcontract Solicitations

When soliciting for multiple or general activities and services, the Purchasing/Subcontract Manager shall send general solicitations to potential bidders. The Commercial Department shall provide information regarding the number of certified DBEs that shall be solicited for their interest in bidding on all scopes of work subcontracted by FDJV.
The following is an example of information which shall be included in the general solicitation:

- Major Work Items to be subcontracted
- PROJECT: XXXXX
- RFP No: XXXXX
- CONTACT: First, Last
- DUE DATE & TIME: **Within X Days of Receipt**
- PHONE: XXXXX
- FAX: XXXXX
- EMAIL: XXXXX

The following information shall be requested from DBE firms:

- Company Name, Address, Phone, Fax, Contact Person and Email Address
- Whether the company is interested in bidding.
- What trade(s) or scope the company performs.
- Whether the company is DBE certified and specify NAICS codes

General solicitations shall be distributed by mail, fax or email to certified DBEs in the TUCP Directory to solicit interest for contracts/ subcontracts on the project. The dates for which the communications were distributed shall be documented as specified in Section 6.6 “Logging and Tracking Communications with Disadvantaged Businesses Enterprises” of this plan.

6.8 Solicitations

Soliciting for activities and services, the Purchasing Manager, with support from the DBE Liaison Officer, shall locate potential DBE vendors and subcontractors following the methods described in Section 6.5 of this guidance. The Purchasing Manager and DBE Liaison Officer shall ensure that the subcontractors are certified and qualified to perform a commercially useful function under the subcontract. The Developer shall submit monthly reports after work begins, on payments to all Contractors both DBE and non-DBE.

6.9 Comparing Bid Information and Selection of Bidder

Once DBE consultants, subcontractors, and suppliers have shown interest in bidding the project the Purchasing Manager shall request a quotation for the activity or service. The Purchasing Manager, with assistance from the Commercial Department and DBE

Liaison Officer, will be responsible for checking and ensuring that DBE firms are certified to perform the services for which they are being solicited.
Upon receipt of the response for bid/quotation from the potential DBE subcontractors, the Purchasing Manager will develop a comparative schedule of bids. This schedule will be used for comparative purposes breaking down the line items into units or lump sum (where applicable) for the activities requested.
FDJV's Project Manager, Purchasing Manager, Commercial Department and input from the DBE Liaison Officer will decide the awardees based on factors such as price, past experience, business and performance practices, completeness of bid package, DBE certification, commercially useful function criteria, and analysis that the firm can meet the requirements detailed in the Safety and Quality Sections of the overall Project Management Plan. It is FDJV's responsibility to make a portion of work available to DBEs on this project. Where FDJV awards a subcontract to a non-DBE where DBE firms have submitted a bid, FDJV shall set forth the reasons why the DBE firm was not awarded the subcontract as part of our good faith efforts.

6.10 Follow-Up with DBEs Failing to Receive Subcontract Award

The Purchasing Manager and DBE Liaison Officer will make a good faith effort to assist the DBE firms by developing reasonable subcontract scopes while maintaining a competitive environment. The DBE firms that fail to receive a contract/subcontract award upon request may be debriefed by FDJV and provided explanation as to why the contract was not awarded. The process for selection of bidder and subcontract award may be explained to the DBE firm at that time.

6.11 Creating and Updating Subcontract Project Report

At the point where the subcontract has been fully executed with the DBE Firm, DBE reports shall be updated to reflect the applicable DBE categories that are valid for the each subcontract.
Table 2 defines the content to be inserted under each column of the DBE Utilization Plan.

Table 2 – Fields for Completing DBE Utilization Plan

COLUMN	DESCRIPTION OF CONTENT
Contractor	Name of firm with hyperlink to the DBE Profile
NAICS Code	Business Description and Capacity
DBE CERT Status	Agency Certification Number
CERT EXPIRATION DATE	Expiration date for the DBE Certification (formatted to provide 45 day notice of expiration to DBE firm)
NAICS Code 1	Enter the Subcontract Amount in each column where the firm is certified and subcontracted scope
NAICS Code 2	
NAICS Code 3	
NAICS Code 4	
Comments	Any comments on subcontract amount or the firm, in general.

6.12 DBE Reports

6.12.1 Developer shall submit monthly DBE status reports (SMS 4903 Form) with the monthly draw request through TxDOT's document control system for the project, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE Contracting or material supply activity is completed.

6.12.2 Developer shall submit a final summary report of DBE payments upon completion of the project. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.

6.12.3 The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

6.12.4 Negative reports are required when no activity has occurred in a monthly period.

6.12.5 Developer shall provide copies of Contracts or agreements and other documentation upon request.

6.12.6 Developer must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the project.

The information to be maintained by FDJV, at a minimum, shall include:

- The number of contracts awarded to DBEs;
- A description of the general categories of contracts awarded to DBEs;
- The dollar value of contracts awarded to DBEs;
- The percentage of the dollar value of all contracts awarded to DBEs; and
- An indication of whether and the extent of which the percentage met or exceeded the goal specified in the application.

6.13 Prompt Payment Provision

Pursuant to 49 CFR Part 26.29, and TxDOT, FDJV and its subrecipients shall ensure that the following clauses are placed in every USDOT-assisted contract:

"Developer agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract and/or agreement no later than ten (10) days from the receipt of each payment from TxDOT. Developer agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TxDOT. This clause covers both DBE and non-DBE contractors."

6.14 DBE Compliance Training

FDJV shall provide training for field supervisors (project managers through field superintendents) and office staff regarding DBE compliance requirements and provisions such as, but not limited to, the following topics. DBE compliance training shall occur at least one (1) time annually.

- Commercial Useful Function
- Good Faith Efforts
- DBE Fraud
- Rules regarding DBE Truckers (see Appendix 6 for Special Provisions)
- Federal Regulations 49 CFR Part 26

FDJV will provide an opportunity for DBE professional service firms, subcontractors, and suppliers to attend trainings and workshops offered by FDJV by written notice of the time and date to ensure that they understand the DBE requirements and special provisions throughout the life of the Project.

7 DBE Good Faith Efforts

The Commercial Department shall maintain all records required to demonstrate that procedures have been adopted and followed to ensure that DBE firms receive a maximum opportunity to participate on the project and to demonstrate FDJV's good faith efforts to achieve the DBE participation goal of 9% as set forth in the contract.

7.1 Examples Good Faith Efforts

In order to make a good faith effort, you must consider the quality, quantity, and intensity of the different kinds of efforts made to identify and solicit DBEs. The following is a list of the kinds of efforts, not intended to be an exhaustive list, to demonstrate a good faith effort:

- Efforts to secure participation by certified DBE firms for work that they are listed to perform that is in the contract. Only DBE firms certified by participating TUCP agencies and in the DBE Directory shall be used to fulfill the established goal on the project.
- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices, sponsoring contractor forums and/or workshops) the interest of all certified DBEs who have the capability to perform the work of the contract. There should be evidence the FDJV advertised in general circulation, DBE trade associations and other minority-

focused publications, concerning the subcontracting and supply opportunities. FDJV shall solicit this interest within sufficient time to allow DBEs to respond to the solicitation. FDJV shall determine with certainty if DBEs are interested by taking appropriate steps to follow-up on initial solicitations.

- FDJV shall, at a minimum, seek certified DBEs willing to perform work on the project by locating them through their profile in the TUCP Directory. The JV may select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be met. This includes, where appropriate, either breaking down operations within the contract or combining like or related operations in the contract into logistically and economically feasible units to facilitate DBE participation, even when FDJV might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation. There should be evidence that FDJV provided written notice to a reasonable number of specific DBEs identified from the TUCP directory of certified DBE firms.
- Effectively using the services of DBE community organizations, associations, minority contractor groups, local, state, and federal minority business assistance offices, and other organizations identified by TxDOT and advocates for DBE and businesses that provide assistance in the recruitment and placement of DBE and E firms.
- All bidders shall keep records of efforts to solicit and negotiate with DBEs, using the Solicitation Log/Bidder's List as a continuing record of pre- and post-award solicitation activity. When submitting a DBE Schedule of Utilization to TxDOT, FDJV shall attach the log, together with the supplemental efforts, as evidence of good faith efforts.

  Supplemental efforts may include, but is not limited to:
  - All envelopes of solicitation inquiries that were returned as undeliverable
  - Any quotations submitted by DBEs that are not included in the DBE Schedule of Utilization with an explanation for the Contractor's action in each case
- Promptly executing an agreement with DBE subcontractors and suppliers

7.2 Good Faith Efforts To Date

Flatiron/Dragados JV has documented our good faith efforts to date beginning with the start of the pre-award phase following TxDOT's announcement of shortlisted firms for the Harbor Bridge project. The following is a summary of efforts completed to date:

- FDJV has sponsored to date three (3) DBE Outreach events. One DBE Outreach meeting was held in Corpus Christi, TX and two separate DBE Outreach meetings were held in San Antonio, TX. The first two meetings focused on subcontractors; the last meeting was organized for both subcontractors and suppliers.
- There were approximately 75 DBE and non-DBE firms in attendance at the meetings. *Firms that attended multiple meetings were only counted one-time for the purpose of this summary.
- FDJV used the TUCP DBE Directory to solicit certified DBE firms for each of the meetings. To maximize participation, FDJV solicited DBEs within 120 mile radius of the project.
- FDJV continues to be responsive to emails, telephones, and written requests from subcontractors, suppliers, and professional service firms regarding the project.

7.3 Future Good Faith Efforts

Flatiron/Dragados JV will document and report our efforts to achieve the DBE participation goal to TxDOT on a consistent basis. This process of documenting our efforts will move forward with the hire of the DBE Liaison Officer and issuance of the NTP for the Harbor Bridge project. The following is a list of the types of efforts that will be exercised following execution of the Agreement to achieve the DBE participation goal for the project:

- Targeted outreach meetings, workshops, and networking forums to meet with and provide project status and overview to subcontractors, suppliers, and professional service firms interested in working on the project.
- Website, email, printed material, and telephone solicitations to subcontractors, suppliers, and professional service firms listed in the TUCP directory soliciting them to provide quotes/bids for opportunities on the project.
- Periodic scope of work meetings, educational sessions, and DBE training workshops will be offered by FDJV to assist a firm's likelihood to participate on the project.
- Documenting all communications with subcontractors, suppliers, and vendors regarding scopes of work on the project, opportunities for them to bid, project schedule, and meeting requests.
- Documenting all quotes and bid information received from interested firms to show how FDJV arrive at decisions to award work.
- Following all of the recommended steps listed in 49 CFR Part 26, Appendix A – Guidance Concerning Good Faith Efforts

8 DBE Performance Plan

The DBE Liaison Officer shall work with FDJV's commercial and engineering departments to execute subcontract awards to DBE firms that have been deemed the most commercially responsive proposers in response to solicitations for our scopes of work. This DBE Performance Plan is an objective look at opportunities that shall be bid over the duration of the project, in scopes where certified DBE firms exist per the TUCP directory, and are expected to win awards based upon responsible bids that meet the requirements of the work. FDJV will use this plan as a guide to ensure that DBE firms receive a maximum opportunity to participate on the project and to demonstrate FDJV's good faith efforts to achieve the DBE participation goal of 9% as set forth in the contract.

POTENTIAL DBE ACTIVITIES

ACTIVITY	YEAR	APPROXIMATE VALUE
CLEARING AND GRUBBING	2016 - 2020	1,000,000.00
INSTALL REINFORCING STEEL	2016 - 2020	8,000,000.00
SEEDING / EROSION MATTING	2016 - 2020	2,000,000.00
CONCRETE SEALING	2016 - 2020	2,000,000.00
GUARDRAIL / FENCING / SIGNS	2017 - 2020	1,000,000.00
CONCRETE BARRIER	2018 - 2020	1,000,000.00
ASPHALT	2017 - 2020	5,000,000.00
STEEL GIRDERS AND FORMS	2017 - 2020	3,000,000.00
CONCRETE BEAMS AND FORMS	2017 - 2020	5,000,000.00
REINFORCING STEEL	2017 - 2020	3,000,000.00
PILING	2017 – 2020	5,000,000.00
MSE WALLS	2017 – 2020	2,000,000.00
WATER FOR DUST CONTROL	2015 – 2020	2,000,000.00
CULVERTS	2015 – 2020	1,000,000.00
MISC. EROSION CONTROL	2016 – 2020	1,000,000.00
ENGINEERING	2015 – 2020	2,000,000.00
QA/QC	2016 – 2020	8,000,000.00
LIGHTING / ELECTRICAL	2016 - 2020	8,000,000.00
JANITORIAL SERVICES	2016 – 2020	1,000,000.00

OFFICE/ADMINISTRATIVE	2015 – 2020	5,000,000.00
ENVIRONMENTAL CONSULTANT	2015 - 2020	1,000,000.00
TRUCKING	2016 - 2020	4,000,000.00
FUEL	2015 - 2018	2,000,000.00
	Total Anticipated	73,000,000.00
	Requirement (9% DBE Goal)	72,084,483.00

EXHIBIT 8

DEVELOPER'S JOB TRAINING PLAN / SMALL BUSINESS OPPORTUNITY PLAN

Exhibit 8

On-The-Job Training Plan

Texas Department of Transportation
Comprehensive Development Agreement

US 181 Harbor Bridge Replacement Project

by
Flatiron/Dragados JV

Exhibit 8

On-The-Job Training Plan

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REVISIONS INDEX

Date	Revised Sections	Rev Number
6/4/15	Chpt 2, Chpt 9 and Chpt 13	1
6/14/15	Chapter 2 Sub titles 2.2 and 2.3 Page numbering	2

Preface

This On-The-Job Training (OJT) Plan describes the requirements Flatiron/Dragados JV intends to meet with regards to the OJT goals for the design and construction work on the Project. This plan is based upon the Instructions to Proposers (ITP), published by Texas Department of Transportation (TxDOT) Comprehensive Development Agreement (CDA or the Contract), US 181 Harbor Bridge Replacement, Request for Proposals dated October 2, 2014 (as amended).

Scope

This document addresses the approach to develop, conduct, and administer highway construction training on the US 181 Harbor Bridge Replacement Project. This document outlines the following:

- Methods to achieve the OJT participation goals.
- Methods to comply with Federal and State laws.
- Cross references to parts of the Project Management Plan identifying the approach to maximize participation through Final Acceptance.
- Approach to develop and implement on-the-job training and apprentice programs.
- Employee and Employee outreach program to encourage participation.
- Framework for identifying qualified trainees and apprenticeships.
- Reporting requirements to TxDOT regarding OJT participation and certification.

Terms and Abbreviations

- Equal Employment Opportunity (EEO)
- Department of Labor (DOL)
- Federal Highway Administration (FHWA)
- Texas Department of Transportation (TxDOT)
- On-the-Job Training Program (OJT)
- Flatiron/Dragados JV

References

23 Code of Federal Regulations section 230.111 Implementation of special requirements for the provision of on-the-job training.
Flatiron/Dragodos JV Technical Proposal
TxDOT Form 2201: Federal On-the-Job Training Program Enrollment Form
TxDOT Form 2202: Federal On-the-Job Training Program Monthly Reporting Form

1. Introduction

The objective of this document is to describe Flatiron/Dragados JV's approach to meet the goals and objectives regarding the training special provisions conducted in accordance with Texas Department of Transportation implementation of 23 U.S.C. § 140 (a). The TxDOT OJT Special Provision is to train and upgrade minorities and women toward journey worker status. Therefore, Flatiron/Dragados JV's ultimate goal for our OJT program on this Project is to offer equal opportunity for the training and advancement of minorities, women and disadvantaged persons toward the journey-level status within the highway construction trades. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

2. On the Job Training

Flatiron/Dragados JV is committed to actively recruiting, hiring, and training a qualified workforce providing uninterrupted labor to complete the Project on-time and within budget. TxDOT has identified the number of trainees to be included on this project to be 39. Where possible, dependent upon the needs of the job, Flatiron/Dragados JV will continue to train persons after the goal has been met. To do so, we will utilize the diverse labor resources throughout the State of Texas to locate and employ individuals interested in working on the Project.

Flatiron/Dragados JV's OJT training program will provide our employees with hands on training to increase their knowledge and skill-set resulting in a more productive and efficient workforce. We will partner with employment organizations and trade programs to recruit and train workforce candidates. Training will be focused on teaching the skills required to perform various job functions as well as other skills to gain employment and retention in the industry not only for this project but future opportunities. Some of the training areas our team has identified as relevant to the Project include the following:

- Heavy Equipment Operator
- Carpenter
- Cement Mason
- Laborer (Utility, etc.)
- Operating Engineer

Each OJT candidate will begin with a two-week probationary period that will allow us to evaluate the candidate's work habits and capabilities and also allow the candidate to experience the work requirements and job conditions. Upon satisfactory completion of the two-week period, the trainee will be officially enrolled in the OJT Program. Each trainee will then be provided with the training program overview and program requirements. The duration of the OJT programs will be specific to the position. The trainee will then be assigned to a knowledgeable employee who will direct, review and support the trainee. The Design Build Joint Venture will hold hands-on training events at the Project site and off-site supplementary training when necessary. Our goal is to make our workforce stronger through the development, training and retention of long-term employees that continue to benefit to the local workforce, economy, and TxDOT through future projects.

2.1 Commitment to On-The-Job Training

To meet the objectives of this plan, Flatiron/Dragados JV and its subcontractors shall be committed to maximizing utilization under the OJT provisions that TxDOT created along with FHWA to address the under-utilization of minority and female workers in the construction trades. Flatiron/Dragados JV may elect to accomplish training as part of the work of a subcontractor; however, Flatiron/Dragados JV will retain the responsibility for complying with the general provisions and requirements of On the Job Training. To that end, Flatiron/Dragados JV and its subcontractors will be guided by two main principles: (1) Affirmative Action Commitment - to be fair and impartial in all relations with persons while recruiting, hiring, and training a workforce that mirrors the community in the representation of skilled and craft laborers in all trades and levels and (2) Equal Employment Opportunity Commitment – to set forth results-oriented policies and commitments of good faith to attain fairness and equity in the administration of all employment practices such as recruiting, hiring, training, job assignments, and more.

2.2 Approach to Employment and Training

Flatiron/Dragados JV believes that an effective approach to on-the-job training cannot be passive. We are aggressive in both the identification and the elimination of inequitable policies, practices and procedures that could result in unlawful employment discrimination and the continued under-utilization of minority and female workers within our workforce. Our approach to employment education and training benefits everyone, at all levels, and fosters upward mobility and continued employment.

Flatiron/Dragados JV will utilize a comprehensive approach to inform, assist, educate and train individuals seeking employment. These steps are described as follows.

- ✓ **Inform:** We conduct consistent and direct recruitment through public and private sources most likely to yield minority and women trainees. We document our recruitment efforts and ensure there is no discrimination in the dissemination of information regarding program opportunities. We discuss OJT at outreach events and public meetings and talk directly with interested applicants. We advertise locally to inform individuals in the project area of the various work opportunities.
- ✓ **Assist:** Evaluate potential trainees and identify any obstacles that could impede their success in the OJT program. Flatiron/Dragados JV will continually monitor our trainees to identify any social or economic issues that may cause obstacles for them by establishing an "open door" policy for early discussion.
- ✓ **Educate:** All OJT and apprenticeship programs will be of the Department of Labor industry standard for trade employees. Subsequently, for non-trade trainees we have training, and project personnel to help foster and maintain a qualified, diverse workforce. We will provide on-site training and presentations that include, but are not limited to, New Employee Orientation, Tool Training, Equipment Training, Daily Tool Box Meetings, Safety Training, Environmental Training, Hazard Analysis Review, Hazmat Response Procedures, Emergency Protocol, and Standard Operating Procedures.
- ✓ **Train:** Qualified individuals are enrolled in a formal On-The-Job training program. Our on-the-job training is intended to be primarily in apprentice able trades and shall include all approved programs.

2.3 Approach for Recruitment and Outreach

All personnel who are engaged in direct recruitment for the project shall be knowledgeable regarding State and Federal procedures for recruiting, hiring and training skilled and craft labor workforce for this project.

Flatiron/Dragados JV will make every effort to enroll minority groups and women trainees to the extent such persons are available. We will actively solicit representatives and community leaders to refer qualified residents within the Corpus Christi area. Current employees and applicants for employment will be made aware of the training programs available and their entrance requirements to foster additional recruiting. Program awareness will be created through advertising, attendance at job fairs, job postings, workforce centers, state employment commission, community organizations, various other media and word of mouth.

Our outreach and recruitment efforts include coordination and cooperation by various project personnel with local, State and national employee referral service programs. Recruiting will be from, but not limited to, the following sources: Current Employee Referrals, Local Trade Schools, and meetings with small business programs, firms and community organizations.

3 Trainee Goals

3.1 TxDOT has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R. §230.111:

1) Dollar value of the construction services contract;
2) Duration of the construction work activity;
3) Geographic location;
4) Availability of minorities, women, and disadvantaged for training;
5) The potential for effective training;
6) Type of work;
7) Total normal work force that the average proposer could be expected to use;
8) The need for additional journeymen in the area;
9) Recognition of the suggested minimum goal for the State; and
10) A satisfactory ratio of trainees to journeymen expected to be on the Design-Build Contractor's work force during normal operations.

Construction Cost Estimate		
From	To	Trainees
$0	$9,999,999.99	0
$10,000,000	$19,999,999.99	1
$20,000,000	$39,999,999.99	2
$40,000,000	$59,999,999.99	3
$60,000,000	$79,999,999.99	4
$80,000,000	$99,999,999.99	5
$100,000,000	$119,999,999.99	6
Thereafter for each increment of $20 million, goal is increased by one trainee		

The OJT program trainee goal for this project is 41 trainees.

3.2 Measuring Plan Success

The Design-Build Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.

1 Subcontractor Performance

In the event that the Design-Build Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The Design-Build Contractor should ensure that this training special provision is made applicable to such subcontract. However, the Design-Build Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

2 Minorities and Women

The Design-Build Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. The Design-Build Contractor shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.

3 Priority positions for training and mentoring

It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

4 TxDOT and FHWA Approvals

TxDOT and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of the Design-Build Contractor and aims to train and upgrade employees to journey worker status.

5 Trade Classifications

TxDOT's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.

6 Apprenticeship Programs

Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

7 Distribution of Trainees

The number of trainees shall be distributed among the work classifications on the basis of the Design-Build Contractor's needs and the availability of journey worker in the various classifications.

8 Trainee Qualifications

No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The Design-Build Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Design-Build Contractor's records should document the findings in each case.

9 TxDOT Office of Civil Rights

At or before contract execution, Contractor must submit the Contractor OJT Plan form to TxDOT's Office of Civil Rights (OCR). Contractor shall submit the Federal OJT Enrollment Form to OCR with a copy to Strategic Projects Office in order for training to be counted toward the project goal and be eligible for reimbursement. The plan shall specify how the Design-Build Contractor intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.

10 Start of Training Program

The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.

11 Apprentice and Trainee Pay

The trainees will be paid at minimum, 60% of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75% for the third quarter of the training period, and 90% for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by TxDOT of Labor or other agency, such appropriate rates shall apply.

12 Apprentice and Trainee Approvals

The OCR must approve all proposed apprentices and trainees before training begins. The Design-Build Contractor must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. The Design-Build Contractor shall provide each trainee with a copy of the training program he or she will follow.

13 Reporting

On a monthly basis, the Design-Build Contractor shall submit the Federal OJT Monthly Reporting Form to TxDOT's Strategic Projects office (SPO) and the OCR. The monthly reporting form will include the number of hours trained and training status. The weekly certified payroll reports will reflect the trainee's training classification and the actual number of hours of training performed in that payroll period. If a trainee is terminated, the Design-Build Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination. Contractor shall submit the Federal OJT Program Monthly Reporting Form to SPO and OCR by the 10th of each month. Contractor shall submit the Federal OJT Program Enrollment Form to the OCR within seven business days of its intent to assign trainees to a project and the training classification to be utilized.

15 Certificate Issuance to Trainees

The Design-Build Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

16 Reimbursement

As detailed in the Final ITP, the Design-Build Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless whether the Design-Build Contractor receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit the Design-Build Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Design-Build Contractor if the trainees are concurrently employed on a federal-aid project and when the Design-Build Contractor contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to the Design-Build Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the Design-Build Contractor and evidences a lack of good faith on the part of the Design-Build Contractor in meeting the requirements of this Training Special Provision.

EXHIBIT 9

FORMS OF D&C PERFORMANCE BOND

9-1 Form of D&C Performance Bond*

9-2 Form of Multiple Obligee Rider for D&C Performance Bond

**If the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the form of bond shall be revised to reflect Design-Build Contractor as the "Principal" or "Contractor", Developer in place of TxDOT as the bond obligee, and the Design-Build Contract as the "Agreement". Further, if the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the multiple obligee rider in the form set forth as Exhibit 9-2 must be provided that identifies TxDOT as the "Ultimate Obligee."*

EXHIBIT 9-1

FORM OF D&C PERFORMANCE BOND

[*To be replaced with actual Performance Bond.*]

US 181 HARBOR BRIDGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Comprehensive Development Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of _____, 201_ (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations related to the D&C Work under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] ***[Insert amount that is 100% of the D&C Price]***. (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the Contract.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This Bond specifically guarantees the performance of each and every obligation of Principal related to the D&C Work under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Noncompliance Charges and Lane Rental Charges as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the Contract Documents with respect to those obligations of Principal which survive such Final Acceptance.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the Contract; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the D&C Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the D&C Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the D&C Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the D&C Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages, Noncompliance Charges and Lane Rental Charges under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $_____ ***[Insert amount that is 10% of the D&C Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

9. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201__.

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 9-2

FORM OF MULTIPLE OBLIGEE RIDER (D&C PERFORMANCE BOND)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No._____.

WHEREAS, on or about the _____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of D&C Work for the US 181 Harbor Bridge Project (the "Project"); and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and that the Texas Department of Transportation ("TxDOT"), be named as an additional obligee under the performance bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Performance Bond No._____ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: TxDOT is hereby added to the Performance Bond as a named obligee (hereinafter referred to as the "Ultimate Obligee").

The Surety shall not be liable under the Performance Bond to the Primary Obligee, the Ultimate Obligee, or either of them, unless the Primary Obligee, the Ultimate Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, is limited to the penal sum of the Performance Bond. The Ultimate Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Ultimate Obligee has received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

The rights of the Primary Obligee under the Performance Bond are subordinate in all respects to the Ultimate Obligee's rights hereunder. The Primary Obligee shall have no right to receive any payments under the Performance Bond and the Surety shall make any and all payments under the Performance Bond to the Ultimate Obligee.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this____ day of _____, 201__.

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

EXHIBIT 10

FORMS OF D&C PAYMENT BOND

10-1 Form of D&C Payment Bond*

10-2 Form of Multiple Obligee Rider for D&C Payment Bond

**If the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the form of bond shall be revised to reflect Design-Build Contractor as the "Principal" or "Contractor", Developer in place of TxDOT as the bond obligee, and the Design-Build Contract as the "Agreement". Further, if the bond is to secure the payment or performance obligations of Design-Build Contractor rather than Developer, then the multiple obligee rider in the form set forth as Exhibit 10-1 must be provided that identifies TxDOT as the "Ultimate Obligee".*

EXHIBIT 10-1

FORM OF D&C PAYMENT BOND

[*To be replaced by actual Payment Bond.*]

US 181 HARBOR BRIDGE PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Comprehensive Development Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of _____, 201_ (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims by Subcontractors and Suppliers in relation to the D&C Work.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $[_____] ***[Insert amount that is 100% of the D&C Price]***. (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the D&C Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.4 of the Comprehensive Development Agreement.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $[_____]***[Insert amount that is 100% of the D&C Price]***. Surety waives notice of any alteration, modification,

supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the D&C Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201__.

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 10-2
FORM OF MULTIPLE OBLIGEE RIDER (D&C PAYMENT BOND)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No._____.

WHEREAS, on or about the _____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__ (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of the D&C Work for the US 181 Harbor Bridge Project (the "Project"); and

WHEREAS, the Primary Obligee requires that Principal provide a payment bond and that the Texas Department of Transportation ("TxDOT"), be named as an additional obligee under the payment bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Payment Bond No._____ (hereinafter referred to as "Payment Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: TxDOT is hereby added to the Payment Bond as a named obligee (hereinafter referred to as the "Ultimate Obligee").

The Surety shall not be liable under the Payment Bond to the Primary Obligee, the Ultimate Obligee, or either of them, unless the Primary Obligee, the Ultimate Obligee, or either of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, is limited to the penal sum of the Payment Bond. The Ultimate Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Ultimate Obligee has received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

The rights of the Primary Obligee under the Payment Bond are subordinate to the Ultimate Obligee's rights hereunder. The Primary Obligee shall have no right to receive any payments under the Payment Bond and Surety shall make any and all payments under the Payment Bond to the Ultimate Obligee.

In the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this____ day of _____, 201__.

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

EXHIBIT 11

FORM OF D&C RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO. _____

RETAINAGE BOND

KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the Contract, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the **Principal** to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the Contract or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____day of_____, 20____.

CONTRACTOR

_____	By: _____
SURETY (Print Firm Name and Seal)	(Title)
*By:_____	By: _____
(Title)	(Title)
_____	_____
SURETY (Print Firm Name and Seal)	**SURETY** (Print Firm Name and Seal)
*By:_____	*By: _____
(Title)	(Title)

*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.

EXHIBIT 12

FORM OF O&M DRAW REQUEST AND CERTIFICATE

Page 1 of 2

US 181 Harbor Bridge Project − Comprehensive Development Agreement
Texas Department of Transportation

Draw Request # 1

Date: month/day/year

Texas Department of Transportation
[Address]

Shaded Cells Require Entry, if applicable

Draw Request for O&M Work performed in the month of [Month , (year)

A	Month #		O&M Period Year #		Available Monthly Disbursement Amount	
		(1-12)		(1-25)		
B	Monthly Amount for Annual Bridge O&M Payment					$0.00
C	Monthly Roadway Payment					$0.00
D	Total Change Order Amount Due					$0.00
E	Total Liquidated Damages Amount					$0.00
F	Total Noncompliance Charges					$0.00
G	Total Lane Rental Charges					$0.00
H	Subtotal (B +C+D-E-F-G)					$0.00
I	Retainage of 10% per CDA 8.5 (H * 0.10)					$0.00
J	Current Amount Due (H – I)					$0.00

FORM OF O&M DRAW REQUEST AND CERTIFICATE

Page 2 of 2

US 181 Harbor Bridge Project – Comprehensive Development Agreement
Texas Department of Transportation

Draw Request #		Date	

month/day/year

Request for Payment:

Developer Authorized Representative **Date**

Review and Final Approval by TxDOT

Draw Request Approved for Payment: ❑ **Yes** ❑ **No**

TxDOT Authorized Representative **Date**

FORM OF O&M DRAW REQUEST AND CERTIFICATE

Page 1 of 1

US 181 Harbor Bridge Project − Comprehensive Development Agreement
Texas Department of Transportation

O&M WORK DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

☐ Certification by the Maintenance QC Manager

☐ O&M Draw Request data sheet(s) and documents that support and substantiate the amount requested.

NOTE - following for information only

O&M Draw Request, Developer shall submit a certificate in a form approved by TxDOT and signed and sealed by the Maintenance QC Manager, certifying that:

- Except as specifically noted in the certification, all O&M Work, including that of designers, Subcontractors and Suppliers, which is the subject of the O&M Draw Request has been checked and/or inspected by the Maintenance QC Manager;
- Except as specifically noted in the certification, all O&M Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law;
- All amounts payable to any designers, consultants, Subcontractors and Suppliers for completed O&M Work have been paid; and
- The Maintenance Services QCP procedures provided therein are functioning properly and are being followed.

EXHIBIT 13

FORMS OF GUARANTY

- *13-1 – Form of D&C Guaranty (use this form if a D&C Guaranty is required)*
- *13-2 – Form of O&M Guaranty (use this form if an O&M Guaranty is required)*

EXHIBIT 13-1

FORM OF D&C GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

A. _____, as developer ("Developer"), and TxDOT are parties to that certain Comprehensive Development Agreement (the "Agreement") pursuant to which Developer has agreed to develop, design, construct, operate and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce TxDOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a _____. The Guarantor is _____. The execution of the Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Agreement with Developer. Therefore, in consideration of TxDOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to (a) the D&C Work under the Contract Documents and (b) the O&M Work under the Contract Documents solely until the O&M Security and, as applicable, the O&M Guaranty have been provided by Developer as required in accordance with Sections 8.2 and 8.7 of the Agreement. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from

time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. <u>Independent Obligations</u>. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require TxDOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and TxDOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any

of the Contract Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of Developer under the Agreement. Accordingly, in the event that Developer's obligations have been changed by any modification, agreement or stipulation between Developer and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. <u>Liability of Guarantor.</u>

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT

may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. <u>Waivers.</u> To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against Developer, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of TxDOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If TxDOT forecloses on any real property collateral pledged by Developer:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. Cumulative Rights. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to TxDOT: Texas Department of Transportation
7600 Chevy Chase Drive, Bldg 2, Suite 400
Austin, Texas 78752
Attention: Mr. Frank Holzmann, P.E.
Telephone: 210 610-4800

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: Jim Bailey, Esq.
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to Developer under

the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 13-2

FORM OF O&M GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

A. _____, as developer ("Developer"), and TxDOT are parties to that certain Comprehensive Development Agreement (the "Agreement") pursuant to which Developer has agreed to develop, design, construct, operate and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce TxDOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a _____. The Guarantor is _____. The execution of the Agreement by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the Agreement with Developer. Therefore, in consideration of TxDOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to the O&M Work under the Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be

and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. <u>Independent Obligations</u>. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require TxDOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and TxDOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract

Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of Developer under the Agreement. Accordingly, in the event that Developer's obligations have been changed by any modification, agreement or stipulation between Developer and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. <u>Liability of Guarantor.</u>

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the

following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the Agreement; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against Developer, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law

or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of TxDOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If TxDOT forecloses on any real property collateral pledged by Developer:

(3) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(4) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. Cumulative Rights. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of

Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to TxDOT: Texas Department of Transportation
7600 Chevy Chase Drive, Bldg 2, Suite 400
Austin, Texas 78752
Attention: Mr. Frank Holzmann, P.E.
Telephone: 210 610-4800

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: Claire McGuinness, Esq.
Telephone: (512) 463-8630
Facsimile: (512) 475-3070

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced)

will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to Developer under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 14

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until Phase 2 Substantial Completion, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, tornado, subsidence, and terrorism; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment to be incorporated into the Project that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) unless covered by commercial general liability insurance pursuant to Section 3 of this Exhibit 14, all existing property and improvements that are within the construction work zone and are or will be affected by the Construction Work, provided however that the policy may include a sublimit of not less than $2,500,000 for such property; and (iii) valuable papers and restoration of data, plans and drawings.

(c) The policy shall provide coverage per occurrence in the amount of the maximum probable loss, but in no event less than $200,000,000, of the covered property loss without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than $25,000,000 per occurrence and in the annual aggregate; (ii) for the peril of a named windstorm, not less than $100,000,000 per occurrence and in the aggregate; (iii) for existing property improvements, not less than $2,500,000; (iv) for building ordinance compliance and increased replacement cost due to any change in applicable codes or other Laws, not less than $10,000,000; (v) for "soft cost expense," not less than $5,000,000; (vi) for professional fees, not less than $1,000,000; (vii) for demolition and debris removal, not less than $50,000,000; and (viii) for goods in storage or in the course of inland transit, not less than $2,500,000.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds on the policy as their respective interests appear. Developer also may, but is not obligated to, include other Subcontractors as named insured as their respective

interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other additional insureds.

(e) To the extent commercially available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence; provided however, for the perils of windstorm, flood and earthquake, the deductible may be expressed as a percentage of the policy limit not to exceed five percent (5%).

2. Watercraft Liability Insurance

Developer shall provide, or cause to be provided watercraft liability insurance, including protection and indemnity and water pollution liability with minimum limits of $15,000,000 per occurrence, whenever watercraft are utilized. Coverage shall include bodily injury (including death and mental anguish), property damage, defense costs, and cleanup costs. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to TxDOT or any employee or agent of TxDOT.

3. Commercial General Liability Insurance During the Construction Period

At all times during the Construction Period and for the D&C Warranty Term, Developer shall procure and keep in force, or cause to be procured and kept in force, in it's own name, commercial general liability insurance as specified below.

(a) The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 3(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and Completed Operations (Such coverage to be maintained for the period of the applicable State Statute of Repose after final completion and acceptance of the final payment for the D&C Work-- with acknowledgement that the Project constitutes the premises and not a product;

(v) Broad form property damage, providing the same or equivalent coverage as ISO form CG 00 01 12 07 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) No exclusion for claims arising from professional services except for CG 22 80 or its equivalent. Should the policy contain a Professional Services exclusion, Developer shall purchase and maintain or cause Design-Build Contractor to purchase and maintain a Contractor's Professional Liability Insurance policy with a minimum limit of $5 million per claim and in the aggregate.

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 5 of this Exhibit 14.

(c) The policy shall have limits of not less than $1,000,000 per occurrence/$2,000,000 aggregate with the general aggregate to apply either on a project-specific or per project basis. Such limits shall be shared by all insureds and additional insured parties and shall reinstate annually during the D&C Period.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 04/13 and ISO form CG 20 37 07/13 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(e) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence unless agreed to otherwise by the Department.

4. Commercial General Liability Insurance During the O&M Period

At all times during the O&M Period and for the O&M Warranty Period, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below.

(a) The policy shall be in form reasonably acceptable to TxDOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and Completed Operations coverage shall be carried for the period of the applicable State Statute of Repose after final completion and acceptance of the final payment for the O&M Work (with acknowledgement that the Project constitutes the premises and not a product);

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 12 07 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) Broad named insured endorsement; and

(xi) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 5 of this Exhibit 14.

(c) The policy shall have limits of not less than $1,000,000 per occurrence/$2,000,000 general aggregate applicable either specifically for this project or on a per project basis.

(d) TxDOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 07/04, and ISO form CG 20 37 07/04 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(e) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

5. Automobile Liability Insurance

At all times during the performance of the Work and during the Term, Developer shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Developer shall be the named insured under its automobile liability policy.

(c) Developer's policy shall have a limit per policy period of not less than $1,000,000 combined single limit.

(d) Each policy shall provide a deductible (but not self-insured retention) not exceeding $1,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

6. Pollution Liability Insurance

Developer shall procure and maintain, or cause to be procured and maintained, at all times throughout the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Developer, its agents, representatives, employees or subcontractors. Coverage shall be at least as broad as:

(a) Contractors Pollution Liability with coverage for losses caused by pollution conditions that arise from the operations of Developer described under the scope of services of this Comprehensive Development Agreement:

(i) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring,

(ii) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

(iii) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

(iv) Non-owned Disposal Site coverage for specified sites (by endorsement) if contractor is disposing of waste(s); and

(v) Coverage for loss, clean-up costs and related legal expense because of a pollution condition arising from the Named Insured's goods, products, or waste during the course of transportation by a carrier to or from: (1) A job site where contracting services are being performed; or (2) a covered location; Including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay as a result of a claim first made against the insured during the policy period.

(b) Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

(c) Contractor's Pollution Liability (occurrence form): Developer shall maintain limits no less than $10,000,000 per occurrence/$10,000,000 aggregate during the D&C Period and no less than $5,000,000 per occurrence/$5,000,000 aggregate during the O&M Period.

(d) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

(e) For coverage during the D&C Period, the policy shall include a 5 year completed operations/extended reporting period that shall begin once the construction is substantially complete.

(f) TxDOT shall be named as an additional insured on the policy. The specific scope of services required under the Comprehensive Development Agreement shall be listed on the certificate of insurance.

7. Umbrella Liability Insurance

Development Entity shall procure, or cause to be procured and maintained umbrella/excess liability insurance on a following form basis, including coverage for all additional insureds, as follows:

(a) During Construction, limits of $100,000,000 per occurrence/aggregate with limits reinstating annually and applying over the Commercial General Liability, Automobile Liability (if any), and Employer's Liability Insurances required above.

(b) During the O&M Period, limits of $75,000,000 per occurrence/aggregate with limits reinstating annually and applying over the Commercial General Liability, Automobile Liability (if any), and Employer's Liability Insurances required above.

8. Professional Liability Insurance

Commencing on the date of issuance of NTP2 with a retroactive date to the date that Professional Services are first rendered respecting design and construction of the Project until the first to occur of (1) five years after Project Final Acceptance, (2) expiration of all applicable statutes of limitation and repose applicable to Professional Services performed for the Project, or (3) ten years after NTP2, Developer shall cause the Design-Build Contractor and the Lead Design Firm and each Subcontractor that is under direct contract with Developer and provides Professional Services to Developer respecting such design and construction to procure and keep in force, professional liability insurance as specified in subparagraphs (a), (b), (c) and (d) below.

(a) A single insurance policy protecting the Developer, Design-Build Contractor (if any) and Lead Design Firm on a project-specific basis and providing coverage of liability of the party performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services or activities for the Project, including for bodily injury or property damage. Should the Developer or Design-Build Contractor not be covered by such project-specific professional liability insurance policy noted here, it is acceptable for the Developer and Design-Build Contractor to instead be covered under a Contractor's Professional Liability Insurance Policy and/or Contractor's Protective Professional Insurance Policy naming both as named insureds and having minimum limits of at least $10 million. Such insurance shall be carried for the term of the construction phase through Substantial Completion and for an additional five (5) years thereafter.

(b) The insurance policy shall have a limit of not less than $20,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually. Should the policy be extended to cover all design subconsultants working on the project, the limit of the project policy shall be increased to $25 million per claim and in the aggregate in lieu of separate insurance as outlined below.

(c) The insurance policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per claim.

(d) The insurance policy shall provide an indemnified party endorsement for the benefit of TxDOT and the Indemnified Parties with regard to third party claims for bodily injury or property damage.

The Developer shall procure and keep in force either (1) a professional liability insurance as specified in subparagraphs (a), (b), (c) and (d) above, or (2) a combination as set forth in this paragraph of a Contractors Protective Professional Indemnity (CPPI) policy and a project-specific professional liability insurance. If Developer does not procure and keep in force professional liability insurance as specified in subparagraphs (a), (b), (c) and (d) above, Developer must procure and keep in place a CPPI policy with coverage of not less than $10 million and the project specific professional liability policy with coverage of not less than $5 million. The combined coverage of the CPPI policy and the project-specific professional liability insurance policy must total at least $30 million.

In addition, Developer shall cause each other Subcontractor that provides Professional Services for the Project during the O&M Period, unless covered by the project-specific professional liability insurance policy provided for above, to procure and maintain in force professional liability insurance until the first to occur of (1) five years after the Subcontractor's Professional Services have concluded for the Project or (2) expiration of all applicable statutes of limitation and repose applicable the Subcontractor's Professional Services performed for the Project or during the O&M period.

Limits shall be as follows:

- For any firm performing professional services wherein that firm's estimated contract value is $10 million or more, a professional liability insurance policy with a limit of not less than $10,000,000 per claim and in the aggregate.

- For any firm performing professional services wherein that firm's estimated contract value is greater than $500,000 but less than $10 million, the professional liability insurance policy will have a limit of at least $2 million per claim and in the aggregate.

- For any firm performing professional services wherein that firm's estimated contract value is $500,000 or less, the professional liability insurance policy shall have a limit of at least $1 million per claim and in the aggregate.

Such policies shall be maintained for a three year period after completion of all professional services by such subcontractor, and shall include a commercially reasonable deductible.

The policies required during the O&M Period need not be Project-specific, and shall include a commercially reasonable deductible. The retroactive date applicable to coverage under the policy must be the earlier of the date professional services are first rendered or the effective date of the applicable Subcontract.

9. Workers' Compensation Insurance

At all times when Work is being performed by any employee of Developer or any Subcontractor, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer and/or the Subcontractors, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement;

(d) An endorsement extending coverage to all states operations on an "if any" basis, and

(e) Coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as may be appropriate and required.

10. Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Developer and all Subcontractors working on or about any Site or otherwise engaged in the work.

(b) Developer and/or the Subcontractor, whichever is the applicable employer, shall be the named insured.

(c) The policy shall have a limit of not less than $1,000,000 (during the D&C Period) and $1,000,000 (during the O&M Period) per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

11. Railroad Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, prior to performing any Work across, under or adjacent to the railroad's tracks or railroad right-of-way, a Railroad Protective Liability Insurance Policy as may be required by the operating railroad.

All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as the named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by Developer upon operating railroad property. In the event any agreement between TxDOT and a railroad includes insurance requirements applicable to the Work, Developer shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

12. Subcontractors' Insurance

At all times during the Term, Developer shall cause each Subcontractor that performs work on the Site to provide the following insurances:

(a) Commercial general liability insurance that complies with Section 9 of the Agreement, except Section 9.1.6.1, with limits of at least $1 million per occurrence and $2 million aggregate; limits applicable on a per project basis. Should any subcontractor be undertaking work with an estimated contract value of $5 million or more, the commercial general liability limits shall be supplemented with an umbrella/excess liability insurance policy with a minimum limit of $5 million, on a following-form basis, unless the Subcontractor is covered as a named insured by Developer-provided liability insurance.

Developer shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such commercial general liability insurance need not be Project-specific, however, as stated above, shall have it's limits applicable on a per project basis. Unless provided separately under an automobile liability insurance policy as required in subsection (b) below, coverage shall be included for liability from the operation of hired, non-owned, and borrowed automobiles. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(b) Automobile liability insurance, with the subcontractor as the named insured, with a minimum limit of $1 million on a combined single limit basis.

(c) Worker's Compensation and Employer's Liability Insurance in conformance with applicable Law. Subcontractor shall be the named insured on such policy and the employer's liability limits shall be a minimum of $500,000 per accident or disease. Each such policy shall be endorsed to include a voluntary compensation endorsement and coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as appropriate and required.

EXHIBIT 15

FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # _____ Date: _____
month/day/year

Texas Department of Transportation
[Address]

	"Entry Required in Cell"	
A. Draw Request for Work performed for the period:	_____ to _____	
	month/day/year	month/day/year
B. Original Contract Amount		
C. Approved Change Order Amounts		
D. Revised Contract Amount (B+C)		$0.00
E. Cumulative Amount Earned to Date (no greater than the amounts shown on Exhibit 26 for this period)		
F. Cumulative Amount of Previous Draw Requests		
G. Amount Completed This Period (E-F)		
H. Amount of Cash Payment Requested this Period (no greater than "G")		
I. Amount of Deferred D&C Payment Certificate Requested this Period (no greater than "G-H")		
J. Cumulative Amount of Cash Payments Requested in Prior Draw Requests		
K. Cumulative Maximum D&C Payment Schedule Allowance (this period from Exhibit 5)		
L. Amount Qualified for Cash Payment this Period (Lesser of "K-J" or "H")		$0.00
M. Cumulative Amount of Deferred D&C Payment Certificates Previously Requested		
N. Cumulative Maximum Deferred D&C Payment Allowance (B - $730,233,000)		

O. Amount Qualified for Deferred D&C Payment Certificate this Period (Lesser of “N-M” or “I”)	
P. Amount of Draw Request retained for Record Drawings ($7,233,000) only applicable to final cash payment draw request(s)	$0.00
Q. Deduction from progress payment per Section 11.6.2 of the Agreement (this Draw Request)	$
R. Deduction due to offset for Liquidated Damages, Noncompliance Charges and Lane Rental Charges (this Draw Request)	$
S. Total deductions ("P + Q + R")	$
T. Current Cash Payment Due (if “L - S” > 0, then “L - S”, otherwise this is 0")	$
U. Current Deferred D&C Certificate to be Issued (if “L - S” ≤ 0, then “O – S+ L”, otherwise this is "O")	$

Printed Name Developer’s Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 4 of 4 for Draw Request Checklist)

DRAW REQUEST NO. _____ CERTIFICATION

The undersigned hereby certifies that:

- Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, and Suppliers, that is the subject of the Draw Request has been checked or inspected by the Professional Services Quality Control Manager with respect to Professional Services and the Construction Quality Acceptance Firm with respect to the Construction Work;

- Except as specifically noted in the certification, all Work that is the subject of the Draw Request conforms to the requirements of the Contract Documents;

- All amounts payable to any designers, consultants, Subcontractors and Suppliers for completed Work have been paid;

- The Professional Services Quality Program and the Construction Quality Program and all of the measures and procedures provided therein are functioning properly and are being followed;

- The Professional Services percentages and construction percentages indicated are accurate and correct; and

- All quantities for which payment is requested on a unit price basis are accurate.

Exceptions:

_____

_____

_____

_____ _____

Name: _____ Date

[PSQCM] [CQAF] Representative

Seal:

DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- ☐ Monthly progress report as described in Section 2.1.1.4 of the Technical Provisions
- ☐ Certifications by the Professional Services Quality Control Manager and the Construction Quality Acceptance Firm
- ☐ Monthly report of personnel hours
- ☐ Draw Request data sheet(s) and documents that support and substantiate the amount requested
- ☐ An approved Schedule of Values or an approved revised Schedule of Values as described in Section 2.1.1.2.10 of the Technical Provisions
- ☐ DBE utilization reports
- ☐ Prompt Payment Certification Form 2177 evidencing prompt payment to DBEs
- ☐ Cash flow curves and comparison to the Maximum Payment Schedule and Schedule of Anticipated Draw Requests
- ☐ An approved Project Baseline Schedule Update as described in Section 2.1.1.3 of the Technical Provisions

EXHIBIT 16

FORM OF CHANGE ORDER

CHANGE ORDER REQUEST NO. _____ CONTRACT NO. _____

SECTION I

Originator:_____ Date: _____

- **Title: _____**

Contract No: _____

- **Company Name: _____**

DESCRIPTION:

_____
_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR CHANGE ORDER:

_____
_____
_____
_____
_____

_____
Developer Project Manager Date

SECTION II

The total amount of this Change Order is $ _____. Documentation supporting the Change Order is attached as Exhibits _____ through _____.

Payment Schedule Items Added/Deducted:

Activity No. Description Amount

_____ _____ _____

This Change Order Request is for (check the applicable categories below):

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- _____ A unit price/quantities Change Order (provide information in Section IIB below)
- _____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is $_____

Section IIB

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: $_____

Section IIC

Summary of Change Order Request by Categories: [Additives/(Credits)]

A. Developer Labor (construction)

1. Wages[1] $ _____

2. Labor benefits[2] (55% of A.1) $ _____

B. Developer and Subcontractor Labor (professional services)

1. Wages (Raw) $ _____

2. Labor benefits[1] (145% of B.1, which includes overhead and profit) $ _____

3. Off-duty peace officers and patrol cruisers[1] $ _____

C. Materials (with taxes, freight and discounts) $ _____

D. Equipment[2] $ _____

E. Subcontracts (Time and Materials cost) $ _____

F. Utility Direct Costs $ _____

G. Other Direct Costs $ _____

H. Overhead and Profit

1. Labor (25% of A.1) $ _____

2. Traffic Control (5% of B.3) $ _____

3. Materials (15% of C) $ _____

4. Equipment (5% of D) _____

5. Subcontracts (5% of E) $ _____

6. Utility Direct Costs (5% of F) $ _____

I. Grand Total $ _____

[1] Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.

[2] Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 12.7.3 of the Agreement.

SECTION III

The status of Substantial Completion is as follows:

- ❑ Unaffected by this Change Order Proposal
- ❑ Affected by (increasing) (decreasing) the date of Substantial Completion by _____calendar days.
- ❑ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance is as follows:

- ❑ Unaffected by this Change Order Proposal
- ❑ Affected by (increasing) (decreasing) the date of Final Acceptance by _____calendar days.
- ❑ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

Accordingly, the summary of the dates of Substantial Completion and Final Acceptance and Float are as follows:

1. Substantial Completion: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

2. Final Acceptance: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

3. Number of days of Project Float _____

Justification for Change Order with reference to the Agreement:

_____

_____

_____

The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

This Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event, occurrence or matter giving rise to the proposed change.

If the foregoing Request for Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

_____

Developer Authorized Representative

Date: _____

SECTION IV (Reviewed by Program Manager)

_____

Program Manager (Comprehensive Development Agreement)

Date: _____

Comments:

_____

_____

_____

_____

_____

SECTION V (Reviewed by TxDOT Project Director)

_____

TxDOT Project Director

Date: _____

Comments:

_____
_____
_____
_____
_____

SECTION VI (Reviewed by FHWA Project Representative)

_____

FHWA Project Representative

Date: _____

Comments:

_____
_____
_____
_____
_____

SECTION VII (Approval by TxDOT District Engineer and Deputy Director)

_____

TxDOT District Engineer **Date**

_____

TxDOT Deputy Director **Date**

Comments:

_____
_____
_____
_____
_____

EXHIBIT 17

LANE RENTAL CHARGES

1. GENERAL

This Exhibit 17 governs:

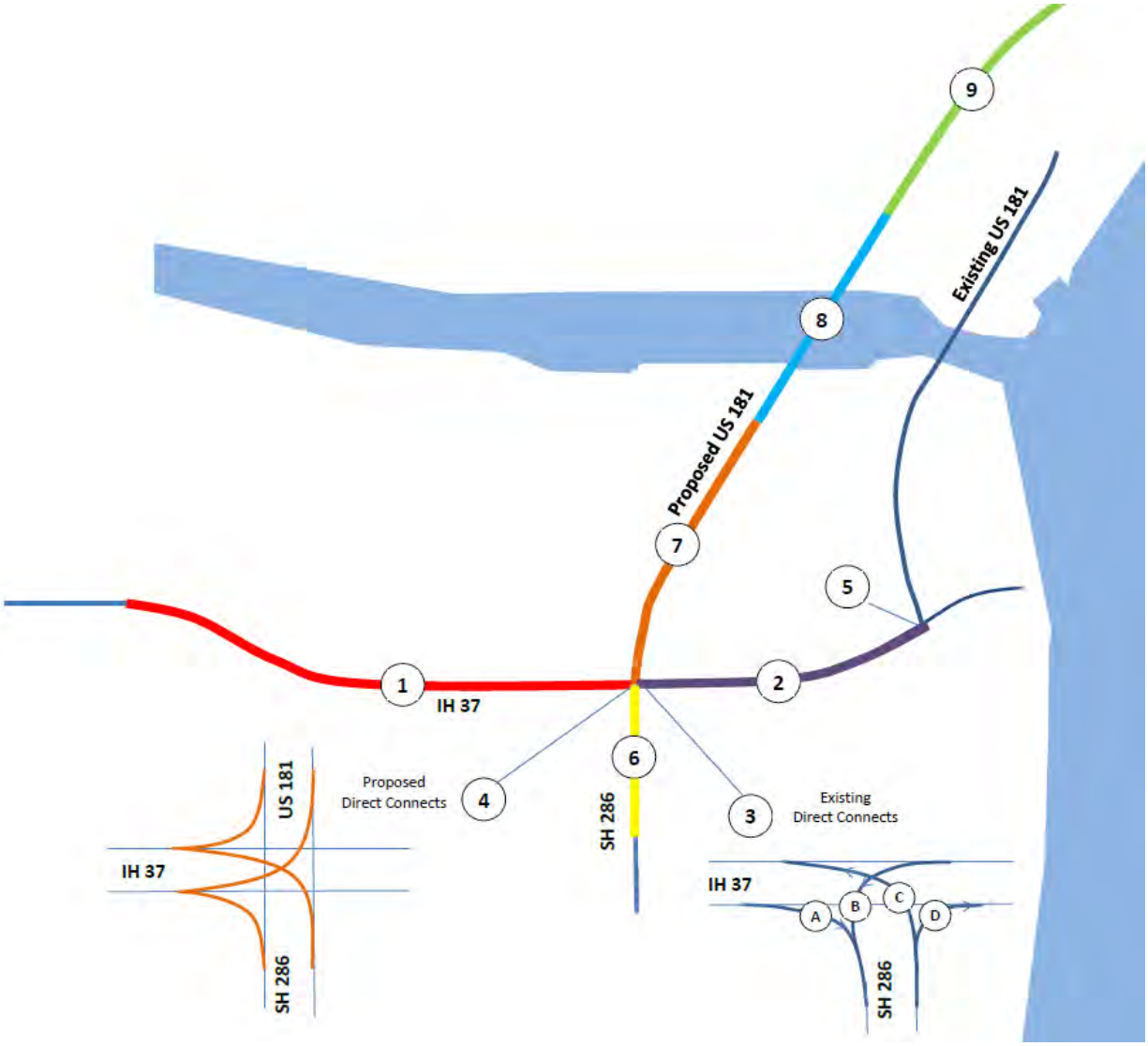
- Lane Rental Charges, applicable for Phase 1 during the Construction Period for Phase 1
- Lane Rental Charges, applicable for Phase 1 after Substantial Completion for Phase 1

For the purpose of calculation of Lane Rental Charges, the Project is divided into nine Segments as defined on Table 17-1 and as shown on Figure 17-1 below.

Table 17-1 Segment Definitions for Lane Rental Charges

Segment	Limits of Segment	Length (miles)
1	IH-37 from West Project Limit to US 181/286 Interchange	1.15
2	IH-37 from US 181/286 Interchange to Project Limit.	0.77
3	Existing Direct Connectors at SH286 / IH 37 interchange.	Varies
4	Proposed Direct Connectors at IH 37 / US 181 Interchange (4 each)	Varies
5	Existing Direct Connectors at IH 37 / Existing US 181 Interchange	Varies
6	SH 286 from South Project Limit to US 181/286 Interchange	0.68
7	Proposed US 181 from US 181/286 Interchange to New Harbor Bridge	0.75
8	New Harbor Bridge	0.83
9	Proposed US 181 from New Harbor Bridge to North Project Limit (including, during the Construction Period, the existing US 181 from Burleson Street to the North Project Limit)	1.32

Figure 17-1 Layout of Segments



2. LANE CLOSURES DURING CONSTRUCTION PERIOD

(a) Lane Rental Charges, as defined in this Exhibit 17 shall be assessed for certain Lane Closures during the Construction Period ("**Construction Period Lane Closures**") as described in Section 17.2 of the Agreement.

(b) Lane Rental Charges for Construction Period Lane Closures shall not be assessed for any Permitted Closure, provided that, in the event that any traffic lane(s) are the subject of a Permitted Closure and a Lane Closure occurs in the adjacent traffic lane(s) remaining in service, then the Lane Closure on the adjacent traffic lane(s) shall be subject to Lane Rental Charges.

(c) Lane Rental Charges for Construction Period Lane Closures shall not be assessed for rolling Lane Closures for the purpose of Construction Work above closed lane(s) if the rolling Lane Closure is less than 15 minutes in duration during Period B and provided that the queued traffic can be dispersed within 10 minutes and returned to the same Level of Service (LOS) as existed prior to the commencement of the Construction Work. If the traffic queue resulting from the Construction Work cannot be dispersed within 10 minutes, then Lane Rental Charges for Construction Period Lane Closures shall be assessed. Lane Rental Charges for Construction Period Lane Closures for rolling Lane Closures shall also be assessed if any rolling Lane Closure is greater than 15 minutes in duration, is for any purposes other than overhead work, or if the traffic queue resulting from a Lane Closure cannot be dispersed within 10 minutes.

(d) The deduction from each Draw Request as set forth in Section 11.2 of the Agreement or the Final D&C Payment as set forth in Section 11.7 of the Agreement for Construction Period Lane Closures shall be the sum of the following:

- For each Lane Closure within the prior month calculated separately for each Segment subject to Lane Closure, the amount of Lane Rental Charges in Table 17-2 for the Period(s) during which each Lane Closure occurred multiplied by the number of clock hours during which each Lane Closure was in effect during each Period.

(e) A Construction Period Lane Closure of 30 minutes or shorter spanning two clock hours shall be measured as occupying only one clock hour (that having the higher Lane Rental Charge amount).

(f) In the case of a Construction Period Lane Closure that affects more than one travel lane, the amount of Lane Rental Charges shall be the amount applicable to the maximum number of travel lanes subject to Lane Closure.

(g) In the case of two or more Mainlane Construction Period Lane Closures separated by a length of roadway that is not subject to Lane Closure in the

same direction of travel and in the same Segment, only the Lane Closure giving rise to the largest value of Lane Rental Charges shall apply.

(h) The Lane Rental Charges shown in Table 17-2 are for one direction of travel. In the case of a Construction Period Lane Closure that includes a Lane Closure in both directions of travel, Lane Rental Charges shall apply for each travel direction affected.

(i) In the case of a Construction Period Lane Closure that occurs at any time during a Holiday, the Lane Rental Charges shall be increased by the multiplication of the Lane Rental Charges shown in Table 17-2 by 150%.

(j) In the case of a Construction Period Lane Closure that includes Lane Closure of one travel lane where the shoulder is utilized temporarily as a replacement travel lane, the Lane Rental Charges shall be that assigned to the shoulder.

(k) The first $30 million of cumulative Lane Rental Charges (the "Lane Rental Bank") incurred by Developer with respect to eligible Construction Period Lane Closures as described in this Exhibit 17 will be forgiven by TxDOT. With the exception of Type 3 Lane Closures, as defined in Section 17 (l) TxDOT will not assess Lane Rental Charges until the cumulative value of Lane Rental Charges calculated between the Effective Date and the date of assessment of the cumulative Lane Rental Charges exceeds the value of the Lane Rental Bank.

(l) Certain Construction Period Lane Closures as defined in Section 18.3.1.3 of the Technical Provisions (the "**Type 3 Lane Closures**") are not eligible to be considered for forgiveness of Lane Rental Charges and TxDOT will assess Lane Rental Charges immediately and in all circumstances.

(m) The provision of Lane Rental Charges for Type 3 Lane Closures does not imply TxDOT's consent to such Lane Closures. Refer to Section 18 of the Technical Provisions for Lane Closure restrictions.

Table 17-2: Hourly Lane Rental Charges for Construction Period Lane Closures

Segments 6 and 9		
Mainlanes (Existing SH 286 and Existing US 181)	**Period A***	**Period B**
3 travel lanes remain open on 3-lane section (e.g. shoulder closed or 1 lane closed and shoulder used)	0	0
2 travel lanes remain open on 3-lane section (e.g. 1 travel lane closed and shoulder closed)	0	0
1 travel lane remains open on 3-lane section (e.g. 2 travel lanes closed and shoulder closed)	0	$7,000**
3 travel lanes plus shoulder closed (full closure)	$30,000	$50,000**

Segments 1 and 2		
Mainlanes (IH-37)	**Period A**	**Period B**
3 travel lanes remain open on 3-lane section (e.g. shoulder closed or 1 lane closed and shoulder used)	0	0
2 travel lanes remain open on 3-lane section (e.g. 1 travel lane closed and shoulder closed)	0	0
1 travel lane remains open on 3-lane section (e.g. 2 travel lanes closed and shoulder closed)	0	$5,000**
3 travel lanes plus shoulder closed (full closure)	$15,000	$25,000**

Segment 3		
Existing Direct Connects A and C SH 286 / IH 37	**Period A**	**Period B**
Partial Closure (at least one travel lane remains open)	0	0
Full Closure (shutdown of direct connect)	$1,000	$2,000
Full closure (shutdown) of existing direct connect with equivalent direct connect alternative***	0	0
Existing Direct Connects B and D SH 286 / IH 37		
Partial Closure (at least one travel lane remains open)	0	$1,000
Full closure (shutdown) of existing direct connect	$2,000	$4,000
Full closure (shutdown) of existing direct connect with equivalent direct connect alternative***	0	0

Segment 5		
Existing Direct Connects IH 37 / US 181	**Period A**	**Period B**
Shoulder Closed	0	0
Full closure (shutdown) of existing direct connect with equivalent direct connect alternative	0	0
Partial Closure (one lane closed on two-lane DC)	0	$1,000
Full Closure of one-lane DC	$1,000	$2,000
Full Closure of two-lane DC	$2,000	$4,000

* For definition of Periods refer to Section 18 of the Technical Provisions

** Denotes a Type 3 Lane Closure for which Lane Rental Charges are not eligible for forgiveness under the Lane Rental Bank provisions.

*** If Developer demonstrates to TxDOT's satisfaction, by means of a TCP submitted to TxDOT in accordance with Section 18.3 of the Technical Provisions, that prior to any Period A or Period B Lane Closure affecting an existing direct connect, Developer will have provided alternative equivalent connectivity, traffic capacity and level of service, the Lane Closure for Period A and/or Period B (as applicable) shall not be subject to Lane Rental Charges. For clarification, equivalent connectivity, traffic capacity and level of service may be provided through the opening to traffic of new facilities providing the same traffic movement as the existing direct connects that are to be closed.

3. LANE CLOSURES AFTER SUBSTANTIAL COMPLETION

(a) Lane Rental Charges shall be assessed in accordance with this Section 3 of Exhibit 17 for Lane Closures within the O&M Limits during the O&M Period ("**O&M Period Lane Closures**").

(b) Lane Rental Charges for O&M Period Lane Closures shall not be assessed for Planned Maintenance. Developer shall refer to the definition for the restrictions applicable to Planned Maintenance.

(c) Lane Rental Charges shall not be assessed for any Permitted Closure, provided that, in the event that any traffic lane(s) are the subject of a Permitted Closure and a Lane Closure occurs in the adjacent traffic lane(s) remaining in service, then the Lane Closure on the adjacent traffic lanes shall be subject to Lane Rental Charges.

(d) Developer shall not be assessed Lane Rental Charges for rolling Lane Closures for the purpose of O&M Work above closed lane(s) if the rolling Lane Closure is less than 15 minutes in duration during Period B and provided that the queued traffic can be dispersed within 10 minutes and returned to the same Level of Service (LOS) as existed prior to the commencement of the O&M Work. If the traffic queue resulting from the O&M Work cannot be dispersed within 10 minutes, then Lane Rental Charges shall be assessed. Lane Rental Charges for rolling Lane Closures shall also be assessed if any rolling Lane Closure is greater than 15 minutes in duration, is for any purposes other than overhead work, or if the traffic queue resulting from a Lane Closure cannot be dispersed within 10 minutes.

(e) If a Noncompliance Event referred to in Exhibit 24, line item 2-44 in the O&M Period Noncompliance Events Table occurs (Failure to address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 19.4.5 of the Technical Provisions), then notwithstanding that the affected travel lane(s) remain open to traffic, TxDOT shall have the right to assess a Lane Rental Charge for an O&M Period Lane Closure for the relevant travel lane in lieu of the applicable Noncompliance Points until the hazard to Users has been mitigated and the Noncompliance Event has been cured.

(f) Lane Rental Charges shall apply only to those Segments for which Developer is responsible for O&M Work.

(g) The deduction from each Monthly Disbursement for O&M Work (or amount of the payment due from Developer) as set forth in Section 11.6 of the Agreement for O&M Period Lane Closures shall be the sum of the following:

- For each Lane Closure within the prior month, calculated separately for each Segment subject to Lane Closure, the amount of Lane Rental Charges in Table 17-3 for the Period(s) during which each Lane Closure occurred multiplied by the number of clock hours during which each Lane Closure was in effect during each Period.

(h) Each of the amounts of Lane Rental Charges for O&M Period Lane Closures shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year. In no event shall the amount be less than the amount in effect during the immediately preceding year. If there is a decrease or no increase in the CPI index then there shall be no increase in the amounts of Lane Rental Charges.

(i) An O&M Period Lane Closure of 30 minutes or shorter spanning two clock hours shall be measured as occupying only one clock hour (that having the higher Lane Rental Charges amount).

(j) In the case of an O&M Period Lane Closure that affects more than one travel lane, the amount of Lane Rental Charges shall be the amount applicable to the maximum number of travel lanes subject to Lane Closure.

(k) In the case of a Lane Closure in more than one Segment within the same clock hour, Lane Rental Charges shall be assessed for each Segment affected.

(l) In the case of two or more Mainlane O&M Period Lane Closures separated by a length of roadway that is not subject to Lane Closure in the same direction of travel and in the same Segment, only the Lane Closure giving rise to the largest value of Lane Rental Charges shall apply.

(m) The Lane Rental Charges shown in Table 17-3 are for one direction of travel. In the case of an O&M Period Lane Closure that includes a Lane Closure in both directions of travel, Lane Rental Charges shall apply for each travel direction affected.

(n) In the case of an O&M Period Lane Closure that occurs at any time during a Holiday, the Lane Rental Charges shall be increased by the multiplication of the Liquidated Damages shown in Table 17-3 by 150%.

(o) In the case of an O&M Period Lane Closure that includes Lane Closure of one travel lane where the shoulder is utilized temporarily as a replacement travel lane, the Lane Rental Charges shall be that assigned to the shoulder.

Table 17-3: Hourly Lane Rental Charges for O&M Period Lane Closures

Segments 6, 7, 8 and 9		
Mainlanes (SH 281 and Proposed US 181 and New Harbor Bridge)	**Period A***	**Period B**
3 travel lanes remain open on 3-lane section (e.g. shoulder closed or 1 lane closed and shoulder used)	$800	$1,800
2 travel lanes remain open on 3-lane section (e.g. 1 travel lane closed and shoulder closed)	$1,600	$3,600
1 travel lane remains open on 3-lane section (e.g. 2 travel lanes closed and shoulder closed)	$2,400	$5,600
3 travel lanes plus shoulder closed (full closure)	$30,000	$50,000

Segments 1 and 2		
Mainlanes (IH-37)	**Period A**	**Period B**
3 travel lanes remain open on 3-lane section (e.g. shoulder closed or 1 lane closed and shoulder used)	$400	$900
2 travel lanes remain open on 3-lane section (e.g. 1 travel lane closed and shoulder closed)	$800	$1,800
1 travel lane remains open on 3-lane section (e.g. 2 travel lanes closed and shoulder closed)	$1,200	$2,800
3 travel lanes plus shoulder closed (full closure)	$15,000	$25,000

Segment 4		
Direct Connectors	**Period A**	**Period B**
Shoulder closed	$200	$400
1 travel lane remains open (partial closure)	$500	$1,000
Full Closure (shutdown) of direct connect	$2,500	$5,000

* For definition of Periods refer to Section 18 of the Technical Provisions

EXHIBIT 18

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s)

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees

Developer's Authorized Representative(s)

Lawrence G Hurley, P.E., Executive Vice President of Dragados USA, and
John Couture, Vice President of Flatiron Constructors, Inc.

EXHIBIT 19

LIST OF REFERENCE INFORMATION DOCUMENTS (RID)

All folder and file names shown below are included in this Exhibit 19.

- 1. I-37 Plans by CSJ
  - nueces-0074-06-027.pdf
  - nueces-0074-06-038.pdf
  - nueces-0074-06-044.pdf
  - nueces-0074-06-079.pdf
  - nueces-0074-06-083.pdf
  - nueces-0074-06-124.pdf
  - nueces-0074-06-126.pdf
  - nueces-0074-06-151.pdf
  - nueces-0074-06-164.pdf
  - nueces-0074-06-173.pdf
  - nueces-0074-06-174.pdf
  - nueces-0074-06-179.pdf
  - nueces-0074-06-181.pdf
  - nueces-0074-06-189.pdf
  - nueces-0074-06-209.pdf
- 2. US 181 Plans by CSJ
  - nueces-0101-06-021-.pdf
  - nueces-0101-06-022.pdf
  - nueces-0101-06-023.pdf
  - nueces-0101-06-024.pdf
  - nueces-0101-06-026.pdf
  - nueces-0101-06-028.pdf

- nueces-0101-06-029.pdf
- nueces-0101-06-030.pdf
- nueces-0101-06-038.pdf
- nueces-0101-06-39.pdf
- nueces-0101-06-061.pdf
- nueces-0101-06-067.pdf
- nueces-0101-06-068.pdf
- nueces-0101-06-070.pdf
- nueces-0101-06-070B.pdf
- nueces-0101-06-072.pdf
- nueces-0101-06-078.pdf
- nueces-0101-06-081.pdf
- nueces-0101-06-084.pdf
- nueces-0101-06-087.pdf
- nueces-0101-06-089.pdf
- nueces-0101-06-092.pdf
- nueces-0101-06-093.pdf
- nueces-0101-06-094.pdf
- nueces-0101-06-096.pdf
- nueces-0101-06-099.pdf
- nueces-0101-06-105.pdf

❖ 3. SH 286 Plans by CSJ

- nueces-0326-03-004.pdf
- nueces-0326-03-015.pdf
- nueces-0326-03-016.pdf
- nueces-0326-03-049.pdf

- nueces-0326-03-061.pdf
- nueces-0326-03-083.pdf

❖ 4. Environmental Studies

- Figure01.pdf
- Figure02.pdf
- Figure03.pdf
- Figure04.pdf
- Figure05.pdf
- Figure06.pdf
- Figure07.pdf
- Figure08.pdf
- Figure09.pdf
- Figure10.pdf
- Figure11.pdf
- Figure12.pdf
- Figure13.pdf
- Figure14.pdf
- Figure15.pdf
- Figure16.pdf
- Figure17.pdf
- Figure18.pdf
- Figure19.pdf
- Figure20.pdf
- Figure21.pdf
- Figure22.pdf
- Figure23.pdf
- Figure24.pdf
- Figure25.pdf
- Figure26.pdf
- Figure27.pdf
- Figure28.pdf
- Figure29.pdf

- Figure30.pdf
- Figure31.pdf
- Figure32.pdf
- Hazmat Action Sites Table 1 – Green Alternative.docx
- Hazmat Action Sites Table 2 - Orange Alternative.docx
- Hazmat Action Sites Table 3 - Red Alternative.docx
- Hazmat Action Sites Table 4 - West Alternative.docx
- Hazmat Sites Summary Memo - 4 Build Alternatives - 08-15-14.docx
- Hazmat Sites Summary Memo - 4 Build Alternatives - 08-15-14.pdf
- hb-historicresourcessurveyreport.pdf
- bh-feasibilitystudy.pdf
- Phase I ESA ACM and LBP Reports
  -
  - ACM LBP Report. (CC-01 CC-02) Recreation Pavilion_FINAL_12-18-2014.pdf
  - ACM LBP Report. (CC-03) Police Station_FINAL_12-18-2014.pdf
  - ACM LBP Report. (CC-04) Former Day Care_FINAL_12-18-2014.pdf
  - ACM LBP Report. (PA-01) Cold Storage Building_FINAL_12-18-2014.pdf
  - ACM LBP Report. (PA-02) Gulf Stream Marine_FINAL_12-18-2014.pdf
  - ACM LBP Report. (PA-03) Port Authority Building 26 and (PA-04) Building 27_FINAL_12-18-2014.pdf
  - ACM LBP Report. (PA-05) HS Fabricators_FINAL_12-18-2014.pdf
  - Phase I ESA TBL CC01-CC02_FINAL_12-29-2014.pdf
  - Phase I ESA TBL CC03_FINAL_12-29-2014.pdf
  - Phase I ESA TBL CC04_ FINAL_12-29-2014.pdf
  - Phase I ESA TBL PA01_FINAL_01-30-2015.pdf

- Phase I ESA TBL PA02_FINAL_01-30-2015.pdf
- Phase I ESA TBL PA03-PA04_FINAL 01-30-2015.pdf
- Phase I ESA TBL PA05_FINAL_01-30-2015.pdf

❖ 5. Harbor Bridge Inspections
- hb-brinsap.pdf
- hb-conditionsurvey.pdf
- hb-surface-prep-coatings-test-program.pdf

❖ 6. Pavement Management Information System
- IH 37 PMIS Summary 2004-2014.pdf
- Ih37pmisscores.pdf
- pmiscondisions.pdf
- rater'smanual.pdf
- SH 286 PMIS Summary 2004-2014.pdf
- sh286pmisscores.pdf
- US 181 PMIS Summary 2004-2014.pdf
- us181pmisscores.pdf

❖ 7. Public Involvement
- hb-publicinvolvment-chronologyofevents-1of2.pdf
- hb-publicinvolvment-chronologyofevents-2of2.pdf

❖ 8. Right of Way Maps
- 010106095_S01.dgn
- 010106095_S02.dgn
- 010106095_S03.dgn
- 010106095_S04.dgn
- 010106095_S05.dgn
- 010106095_S06.dgn
- 010106095_S07.dgn
- 010106095_S08.dgn

- 010106095_S09.dgn
- 010106095_S10.dgn
- 010106095_S11.dgn
- 010106095_S12.dgn
- 010106095_S13.dgn
- 010106095_S14.dgn
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- 010106095_S16.dgn
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- 010106095_S24.dgn
- 010106095_S25.dgn
- 010106095_S26.dgn
- 010106095_S27.dgn
- 010106095_S28.dgn
- 010106095_S29.dgn
- 010106095_S30.dgn
- 010106095_S31.dgn
- 010106095_S32.dgn
- 010106095_S33.dgn
- 20141001 HB_Parcel_List final version
- 20141209 HB Parcel List.pdf

- CC_IH37.tbl
- crp007406ad.pdf
- crp007406ak.pdf
- crp010106ac.pdf
- crp010106ad.pdf
- crp032603ab.pdf
- MRF010106095_CL.dgn
- MRF010106095_ExROW.dgn
- MRF010106095_ML.dgn
- MRF010106095_Planimetrics.dgn
- MRF010106095_PropROW.dgn
- MRF010106095_SchemApprov.dgn
- NUECES 83_2004.dwg
- Parcel 207.pdf
- Parcel 230.pdf
- Parcel 231.pdf
- Parcel 265.pdf
- Parcel 266.pdf
- S-5492.04_Harbor Bridge_Control_Sht 03.dgn
- S-5492.04_Harbor Bridge_Index_Sht 02.dgn
- S-5492.04_Harbor Bridge_Index_Sht 02A.dgn
- S-5492.04_Harbor Bridge_Map_Sht 04.dgn
- S-5492.04_Harbor Bridge_Map_Sht 05.dgn
- S-5492.04_Harbor Bridge_Map_Sht 06.dgn
- S-5492.04_Harbor Bridge_Map_Sht 07.dgn
- S-5492.04_Harbor Bridge_Map_Sht 08.dgn
- S-5492.04_Harbor Bridge_Map_Sht 09.dgn

- S-5492.04_Harbor Bridge_Map_Sht 10.dgn
- S-5492.04_Harbor Bridge_Map_Sht 11.dgn
- S-5492.04_Harbor Bridge_Map_Sht 12.dgn
- S-5492.04_Harbor Bridge_Map_Sht 13.dgn
- S-5492.04_Harbor Bridge_Title_Sht 01.dgn
- S-5492.04-Harbor Bridge_BORD.dgn
- S-5492.04-Harbor Bridge_EXISTING.dgn
- S-5492.04-Harbor Bridge_PROPOSED.dgn
- S-5492.04-Harbor Bridge_TOPO.dgn
- US181-RCSJ 0101-06-109 BMB (11-14-2014).PDF
- US181-RCSJ 0101-06-109 CDSmuery (12-17-2014).PDF
- US181-RCSJ 0101-06-109 North Parcel Surveys (10-23-2014).zip
- US181-RCSJ 0101-06-109 South Parcel Surveys (11-24-2014).zip
- AppraisalServices
  - SPD-ROW-E-001 (REV 2_13).pdf
- UPRR
  - 511.pdf
  - 512.pdf
  - 512-2.pdf
  - 521.pdf
  - 522.pdf
  - 523-2.pdf
  - 523-I.pdf
  - 524.pdf
  - 525.pdf
  - 526.pdf
  - 527.pdf

- 528 I-c.pdf
- 529.pdf
- 531.pdf
- 532.pdf
- 533.pdf
- 535I.pdf
- 536.pdf
- 539.pdf
- 540.pdf
- 540-1-I-S.pdf
- 541-I.pdf
- 542.pdf
- 542-I-C-U.pdf
- 543.pdf
- 544.pdf
- 544-2.pdf
- 545.pdf
- 546.pdf
- 547.pdf
- 548.pdf
- 549.pdf
- 549-2.pdf
- 550.pdf
- 551.pdf
- 551-2.pdf
- 583-14-C-I.pdf
- 597-I-C.pdf

- 598.pdf
- 599I.pdf
- 610.pdf
- 613.pdf
- 625.pdf
- 641.pdf
- File 2554-92-1.pdf
- File 2554-92-2.pdf
- File 2554-92-3.pdf

❖ 9. Port

- 01 14 13 - Access to Port AuthorityProperty 4th revision eff 04-15-09.doc
- 2 - 26 August 2011CCSC LRR.pdf
- 03-013A-Shotcrete Repairs at CD 2, 9, 10, 14-15.pdf
- 06-001A-Mooring Structures at CD 8.pdf
- 32 31 13 - Chain Link Fences and Gates-Revised.doc
- 76-003 Drainage West of CD 15.pdf
- 80-002 Rehab-CD 10.pdf
- 89-009A CD 8 Structural.pdf
- 89-009A CD 8-General Notes.pdf
- 89-009A CD 8-General, Civil, Electrical.pdf
- 1923 CD 3-6 Construction.pdf
- Cargo Dock 10 Inspection.pdf
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- Channel Closure Requirements.docx
- Clearance Diagram.pdf

- Column Plan Layout.pdf
- CSW Executed Bill of Sale.pdf
- Final Harbor Bridge Study - December 2010.pdf
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- Harbor Bridge Security Fencing North 6.30.14.pdf
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- PCCA Gate and Fence Standard.dwg
- PCCA Standard Railroad Details Switch.pdf
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- POCC - Sam Rankin St Imps 9.24.13.pdf
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- Port Photos - 20s-30s.pdf
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- Rail Maintenance Agreement.pdf
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- ADT-15 - MLK Dr E of Staples and W of I-37 on-ramp.xls
- ADT-16 - Upper Broadway N of Buffalo St.xls
- ADT-17 - Twigg W of Mesquite.xls
- ADT-18a - I-37 EB - E of N Chaparral.xls
- ADT-18b - I-37 WB - E of N Chaparral.xls
- ADT-19 - I-37 WBFR to EB turnaround E of N Port.xls

- TMC
- 1A-_I-37_WBFR_at_Buddy_Lawrence_Drive_182117_09-04-2014.xls
- 1B-_I-37_EBFR_at_Buddy_Lawrence_Drive_182120_09-04-2014.xls
- 2A-_I-37_WBFR_at_Nueces_Bay_Blvd_182122_09-04-2014.xls
- 2B-_I37_EBFR_at_Nueces_Bay_Blvd_182126_09-04-2014.xls
- 3A-_I-37_WBFR_at_N_Port_Ave_182131_09-04-2014.xls
- 3B-_I-37_EBFR_at_N_Port_Ave_182133_09-04-2014.xls
- 4-_Antelope_St_at_Leopard_St_182135_09-04-2014.xls
- 5-_Culberson_St_at_Lipan_St_182141_09-04-2014.xls
- 6-_Culberson_St_at_Comanche_St_182144_09-04-2014.xls
- 7-_Brownlee_Blvd_at_Lipan_St_182146_09-04-2014.xls
- 8-_Brownlee_Blvd_at_Comanche_St_182149_09-04-2014.xls
- 9-_Brownlee_Blvd_at_Leopard_St_182152_09-04-2014.xls
- 10-_Brownlee_Blvd_at_Antelope_St_182155_09-04-2014.xls
- 11-_Brownlee_Blvd_at_Martin_Luther_King_Dr_182159_09-04-2014.xls
- 12-_Brownlee_Blvd_at_Winnebago_St_182648_09-10-2014.xls
- 13-_N_Staples_St_at_Antelope_St_182164_09-04-2014.xls
- 14-_N_Staples_St_at_Martin_Luther_King_Dr_182169_09-04-2014.xls
- 15-_Padre_Street_at_Ramirez_Street_182176_09-04-2014.xls

- 15B-_Padre_Street_at_Buffalo_Street_182179_09-04-2014.xls
- 16A-_I-37_WB_at_Mesquite_St_182321_09-04-2014.xls
- 16B-_I-37_EB_at_Mequite_St_182328_09-04-2014.xls
- 17A-_I-37_WB_at_N_Chaparral_St_182335_09-04-2014.xls
- 17B-_I-37_EB_at_N_Caparral_St_182338_09-04-2014.xls
- 18-_I-37_at_N_Water_St_182345_09-04-2014.xls
- 19A-_N_Shoreline_Blvd_SB_at_I-37_182348_09-04-2014.xls
- 19B-_N_Shoreline_Blvd_NB_at_I-37_182350_09-04-2014.xls
- 20-_N_Tancahua_Stat_Belden_St_182351_09-04-2014.xls
- 21-_N_Broadway_St_at_Belden_St_182352_09-04-2014.xls
- 22A-_W_Causeway_Blvd_at_Burleson_St_182366_09-04-2014.xls
- 22B-_Seigler_St__W_Causeway_Blvd_at_Burleson_182372_09-04-2014.xls
- 22C-_E_Causeway_Blvd__Seagull_Blvd_at_Burleson_St_182377_09-04-2014.xls

- RED
  - 2035_TDM (Red Alternative).zip
  - CC_TDM_OUTPUT_2023_V4_(REV_SPEED).dbf
  - CC_TDM_Output_2023_v4_(rev_speed).ID.atx
  - CC_TDM_Output_2023_v4_(rev_speed).prj
  - CC_TDM_Output_2023_v4_(rev_speed).shp
  - CC_TDM_Output_2023_v4_(rev_speed).shx
  - CC_TDM_Output_2035_v7_(rev_speed).dbf
  - CC_TDM_Output_2035_v7_(rev_speed).ID.atx

        - CC_TDM_Output_2035_v7_(rev_speed).prj
        - CC_TDM_Output_2035_v7_(rev_speed).sbn
        - CC_TDM_Output_2035_v7_(rev_speed).sbx
        - CC_TDM_Output_2035_v7_(rev_speed).shp
        - CC_TDM_Output_2035_v7_(rev_speed).shp.xml
        - CC_TDM_Output_2035_v7_(rev_speed).shx
    - SignalWarrants
        - LOC No. 01 DRAFT REPORT.pdf
        - LOC No. 02 DRAFT REPORT.pdf
        - LOC No. 03 DRAFT REPORT.pdf
        - LOC No. 04 DRAFT REPORT.pdf
        - LOC No. 05 DRAFT REPORT.pdf

❖ 20. R_UDAT

- Corpus Christi R_UDAT.pdf
- US_181_CorpusChristi_R_UDAT_Report_Recommendations_MPO_100214.pdf

❖ 21. Permitting

- USACE – Draft
    - engform_4345_2013Nov_4.pdf
    - HB_Veg_Planting Memo_111314.pdf
    - MitigationAerialMap.pdf
    - MitigationTopoMap.pdf
    - PS-181HBR-OTHER-WETLANDS_2014-10-13.pdf
    - TierII_Nov_4.docx
    - US181HB-S-EV-EXH000_2014-11-04.pdf
    - USACELPropOwnList.docx
    - WETLANDStbl_2014-10-13.pdf
- USCG – Draft
    - US-181HB-S-EV-EXH001_2014-12-01.pdf

❖ 22. Railroad

- 20140912-ExhA-RR-PP-UP01.pdf

- 20140912-ExhA-RR-PP-UP01_Comments.docx

❖ 23. Agreements

- 2015-1-26 Exhibits.docx
- 2015-1-26 Rev 9 Port Construction Agreement.docx
- 2015-2-24 Clean CC Funding Agreement w Exhibits.pdf
- Fully executed San Patricio AFA.PDF
- Nueces County Funding Agreement Fully Executed.PDF
- Port Funding Agreement Fully Executed.pdf

EXHIBIT 20

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "**Agreement**") is made and entered into this 28th day of September, 2015, (the "**Effective Date**") by and between the Texas Department of Transportation ("**TxDOT**"), and Flatiron/Dragados, LLC ("**Developer**"). TxDOT and Developer are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, for the US 181 Harbor Bridge Project, dated as of the Effective Date (the "**Comprehensive Development Agreement**") and the other Contract Documents, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code.

B. Section 19.3 of the Comprehensive Development Agreement, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the Contract Documents.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Contract Documents, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Contract Documents.

1.2 Reference Section of Comprehensive Development Agreement. Section 19.3 of the Comprehensive Development Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Agreement to a "Section" mean the Section contained in this Agreement.

Section 2. Purpose and Role of the Disputes Board; Binding Disputes Board Decision.

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or

facilitating body and has no role other than as expressly described in this Agreement and in Section 19.3 of the Comprehensive Development Agreement. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.

3.1 Selection of Disputes Board Member Candidates and Disputes Board Members.

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications (as defined in Section 4 below) and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a **"Disputes Board Member Candidates List"**). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of Developer previously approved or deemed approved by TxDOT on or before the Effective Date and (b) Developer accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by Developer on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 19.3.4(b) of the Comprehensive Development Agreement, a Dispute is referred by TxDOT or Developer to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received (or within seven days after notice of a Fast-Track Dispute is given or received), appoint and engage one of the preapproved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by Developer and (c) a third individual selected pursuant to Section 3.1.3 below. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board Member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1 (each such agreement, upon execution, being referred to herein as a "**Disputes Board Member Joinder Agreement**" and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment, within 15 days after their appointment (or

within seven days after their appointment, if the Dispute for resolution by the Disputes Board is a Fast-Track Dispute), select the third Disputes Board Member (the **"Disputes Board Chair"**) from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. If the two Disputes Board Members appointed by Developer and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either Developer or TxDOT or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates that appear on the Parties' Disputes Board Member Candidate Lists. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the qualified and approved candidates remaining on the Parties' Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board Members or the Chief Administrative Judge (or within seven days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board's issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

3.2 Replacing Candidates on a Party's Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the **"Nominating Party"**) until complete Disclosure Statements on such individual are furnished to the other Party (the **"Evaluating Party"**) and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party's Disputes Board Member Candidates

List. **"Disclosure Statements"** shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after receipt of a proposed candidate's Disclosure Statements by the Evaluating Party (the **"Disputes Board Member Candidate Evaluation Period"**), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within 15 days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15-day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of

Section 3.2.3, if the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination "**For Cause**" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member For Cause or the death or resignation of a Disputes Board Member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement Disputes Board Member has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and Developer may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or Developer may unilaterally terminate the appointment of any Disputes Board Member For Cause.

Provided, however, that if a Disputes Board Member's appointment is terminated For Cause and a Party disagrees that such Disputes Board Member should have been terminated For Cause, such Party may, within five Business Days after notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the propriety of such termination.

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

Section 4. Qualifications and Conduct of Disputes Board Members.

"Disputes Board Member Qualifications," as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party's Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the Comprehensive Development Agreement, in any Subcontract or the Project or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party's Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party's approval or deemed approval of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual's lack of qualifications under Section 4.1 (except if such individual's lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual's Disclosure Statements prior to inclusion of such individual on the Nominating Party's Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for

termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the Comprehensive Development Agreement or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "**Commercial Rules**" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstance has or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A **"Small Claim"** is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is $100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Members shall be released from further service. Thereafter, in the context of the Disputes Board Chair's resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 19.3 of the Comprehensive Development Agreement to the "Disputes Board" or the "Disputes Board Members" shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Disputes Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than $100,000, and TxDOT or Developer as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of $100,000; provided, however, that the amount of $100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the

proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on a Dispute (other than a Fast-Track Dispute, in which case within five days after the final hearing on the Fast-Track Dispute), the Disputes Board Chair shall issue the Disputes Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board that are confidential pursuant to Section 19.3.8 of the Comprehensive Development Agreement. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 19.3.8 of the Comprehensive Development Agreement. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

Section 6. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 19.3 of the Comprehensive Development Agreement.

Section 7. TxDOT and Developer Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the Contract Documents. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon Developer) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Developer Responsibilities. Developer shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Developer's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 19.3.4(a) of the Comprehensive Development Agreement.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the Comprehensive Development Agreement and thereafter for so long as either Party has

any obligation originating under the Contract Documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Developer for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Developer, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and Developer, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

Section 10. Nonassignability.

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. No Disputes Board Member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities Under the Contract Documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the Contract Documents and, subject to the terms and conditions of the Contract Documents, by Law.

11.3 Damages Waiver. Neither TxDOT nor Developer will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 19.3 of the Comprehensive Development Agreement and any other relevant provisions of the Contract Documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 19.3 of the Comprehensive Development Agreement or any other relevant provision of the Contract Documents, the Comprehensive Development Agreement or other DRP Governed Agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 24.11 of the Comprehensive Development Agreement. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

Developer:

Flatiron/Dragados, LLC

By: _____
Lawrence G. Hurley
Authorized Person

TxDOT:

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
LtGen. J. Weber, USMC (Ret)
Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "**Agreement**") is entered into this _____ day of _____, _____ by and between _____ [*Specify TxDOT or Developer*] (the "**Appointing Party**"), and _____, an individual (the "**Disputes Board Member**").

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, for the US 181 Harbor Bridge Project, dated as of the Effective Date (the "**Comprehensive Development Agreement**") and the other Contract Documents, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code.

B. Section 19.3 of the Comprehensive Development Agreement, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the Contract Documents.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in Section 19.3 of the Comprehensive Development Agreement, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the Contract Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 19.3 of Comprehensive Development Agreement. The Disputes Board Agreement and Section 19.3 of the Comprehensive Development Agreement, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance with the terms and conditions of Section 19.3 of the Comprehensive Development Agreement, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Developer, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Developer that he:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 19.3 of the Comprehensive Development Agreement;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 19.3.8 of the Comprehensive Development Agreement.

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or Developer that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Developer have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Developer shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

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

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

Appointing Party:

[*TxDOT or Developer*]

By:_____

Name:_____

Title: _____

Disputes Board Member:

By:_____

Name:_____

Address:

_____

_____

_____

_____

Annex I

to

Disputes Board Member Joinder Agreement

Fees, Costs and Expenses

[*To be attached.*]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The **"Expedited Procedures"** means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The **"Procedures for Large, Complex Commercial Disputes"** means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at $500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 19.3 of the Comprehensive Development Agreement, Section 19.3 of the Comprehensive Development Agreement shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party,

who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(a) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the Contract Documents.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least five Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising is discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses, including the Independent Engineer.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes

Board shall set the date and time of such inspection or investigation and notify the Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both The Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 24.11 of the Comprehensive Development Agreement.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 19.3 of the Comprehensive Development Agreement, including, but not limited to, specific performance of any obligation under the Contract Documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 19.3.4(a) of the Comprehensive Development Agreement.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4(a).

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a "consent Disputes Board Decision."

R-37. Acceptance of Delivery of Disputes Board Decision

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 24.11 of the Comprehensive Development Agreement.

R-38. Correction of Errors in Disputes Board Decision

Within five Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already decided. The other Party shall be given five Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party

objects. Any unresolved disagreement between the Parties as to the existence of a clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4(a)).

R-42. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

R-43. No Suspension for Nonpayment

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall

occur. Ex parte conversations to resolve a fee dispute between the Dispute Board Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 24.11 of the Comprehensive Development Agreement, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds $10,000, exclusive of interest and arbitration costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within seven days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) exchange and premarking of those documents which each Party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a **"Scheduling and Procedure Order"**). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 19.3 of the Comprehensive Development Agreement.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 19.3 of the Comprehensive Development Agreement.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

EXHIBIT 21

[Not Used]

EXHIBIT 22

KEY SUBCONTRACTORS

Project Management: No Key Subcontractor (self-performed by Developer)

Lead Design Firm: Figg Bridge Engineers, Inc.

Quality Control Management:

- Design: Figg Bridge Engineers, Inc.
- Construction: No Key Subcontractor (self-performed by Developer)

Quality Assurance Management:

- Design: Figg Bridge Engineers, Inc.
- Construction: No Key Subcontractor (self-performed by Developer)
- Independent Construction Quality Acceptance (CQAF) / Construction Quality Acceptance Manager (CQAM): PaveTex Engineering & Testing, Inc.

Key Task Leaders:

- Geotechnical: Professional Services Industries, Inc. (PSI)
- Hydraulics and Hydrology: Kellogg Brown & Root Services, Inc. (KBR)
- Structural: Figg Bridge Engineers, Inc.
- Environmental: Blanton & Associates, Inc.
- Utilities:
  - Design: Kellogg Brown & Root Services, Inc. (KBR)
  - Utility Manager: KCI Technologies, Inc.
- Right of Way: Pinnacle Consulting Management Group, Inc.

EXHIBIT 23-1.1

ROUTINE O&M PAYMENT SCHEDULE - NEW HARBOR BRIDGE

Full Year of Operation (from Substantial Completion)	Annual Routine O&M Price in 2015 U.S. Dollars (A)
1	$2,198,354.56
2	$2,198,354.56
3	$2,198,354.56
4	$2,198,354.56
5	$2,269,859.83
6	$2,269,859.83
7	$2,269,859.83
8	$2,269,859.83
9	$2,269,859.83
10	$2,269,859.83
11	$2,269,859.83
12	$2,269,859.83
13	$2,269,859.83
14	$2,269,859.83
15	$2,269,859.83
16	$2,269,859.83
17	$2,269,859.83
18	$2,269,859.83
19	$2,269,859.83
20	$2,269,859.83
21	$2,269,859.83
22	$2,269,859.83
23	$2,269,859.83
24	$2,269,859.83
25	$2,269,859.83

EXHIBIT 23-1.2

ROUTINE O&M PAYMENT SCHEDULE – ROADWAY SECTION

Full Year of Operation (from Substantial Completion)	Annual Routine O&M Price in 2015 U.S. Dollars (A)
1	$2,462,599.08
2	$2,462,599.08
3	$2,462,599.08
4	$2,462,599.08
5	$2,546,540.04
6	$2,546,540.04
7	$2,546,540.04
8	$2,546,540.04
9	$2,546,540.04
10	$2,546,540.04
11	$2,546,540.04
12	$2,546,540.04
13	$2,546,540.04
14	$2,546,540.04
15	$2,546,540.04
16	$2,546,540.04
17	$2,546,540.04
18	$2,546,540.04
19	$2,546,540.04
20	$2,546,540.04
21	$2,546,540.04
22	$2,546,540.04
23	$2,546,540.04
24	$2,546,540.04
25	$2,546,540.04

EXHIBIT 23-2.1

RENEWAL-OTHER WORK PAYMENT SCHEDULE – NEW HARBOR BRIDGE

Full Year of Operation (from Substantial Completion)	Annual Renewal – Other Price in April 2015 U.S. Dollars (C)
1	$0.00
2	$0.00
3	$0.00
4	$0.00
5	$58,553.48
6	$0.00
7	$0.00
8	$0.00
9	$0.00
10	$102,433.60
11	$0.00
12	$0.00
13	$0.00
14	$0.00
15	$7,956,129.26
16	$0.00
17	$0.00
18	$0.00
19	$0.00
20	$812,519.05
21	$0.00
22	$0.00
23	$0.00
24	$0.00
25	$4,795,162.83

EXHIBIT 23-2.2

RENEWAL-OTHER WORK PAYMENT SCHEDULE – ROADWAY SECTION

Full Year of Operation (from Substantial Completion)	Annual Renewal – Other Price in April 2015 U.S. Dollars (C)
1	$0.00
2	$0.00
3	$0.00
4	$0.00
5	$134,040.24
6	$0.00
7	$187,302.81
8	$0.00
9	$0.00
10	$3,697,532.45
11	$0.00
12	$0.00
13	$89,835.40
14	$2,129,623.87
15	$18,997,905.66
16	$274,497.05
17	$0.00
18	$90,504.67
19	$0.00
20	$13,282,795.76
21	$187,302.22
22	$76,422.55
23	$89,835.40
24	$3,273,546.57
25	$12,731,502.47

EXHIBIT 24

NONCOMPLIANCE EVENTS

Tables 24-1 and 24-2 to this Exhibit 24 identify Developer failures and breaches that entitle TxDOT to assess Noncompliance Points.

- Table 24-1 shall be applicable from the Effective Date until Substantial Completion of Phase 1.
- Table 24-2 shall be applicable from Substantial Completion of Phase 1 until the end of the O&M Period.

For each failure or breach, Table 24-1 and Table 24-2 identify the number of Noncompliance Points that may be assessed for each such failure or breach, and the cure period (where applicable) available to Developer for each such failure or breach.

If a Noncompliance Event for which a "Cure Period" is provided in Table 24-1 or Table 24-2 is not fully and completely cured within the applicable cure period, Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period (of duration equal to the prior cure period), as described in Section 13.3.4 of the Agreement.

Notwithstanding anything to the contrary in the Agreement, a cure period shall not be available to Developer when the Noncompliance Event is Developer's failure to deliver any Submittal to TxDOT within the time period allowed by the Contract Documents, and in the case of a Submittal the Noncompliance Event shall occur and TxDOT may assess Noncompliance Points immediately upon expiry of the time period allowed by the Contract Documents for the Submittal.

In accordance with Section 13.2.3 of the Agreement, the cure period shall be deemed to start upon the date and time Developer first obtained knowledge of, first reasonably should have known of, the Noncompliance Event.

- For a Category A Noncompliance Event, the cure period shall start not later than the date and time of delivery by TxDOT of a Notice of Determination to Developer.
- For a Category B Noncompliance Event, the cure period shall start not later than the date and time on which the Noncompliance Event occurred, regardless of whether TxDOT has delivered a Notice of Determination to Developer.
- For a Category C Noncompliance Event, no cure period is applicable and the assessment of Noncompliance Points shall be in accordance with Section 13.3.6 of the Agreement

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-1	General	Notify a Noncompliance Event	Notify TxDOT of the occurrence of any Noncompliance Event specified in this Table 24-1 in accordance with Section 13.2 of the Agreement.	2	C	None
1-2	General	Maintain a Noncompliance Event Database	Maintain a fully functional and up to date Noncompliance Events Database accessible to TxDOT in accordance with Section 13.2.1 of the Agreement.	2	A	7 Days
1-3	General	Provide Safe and Unrestricted Access to the Project	Provide TxDOT or its Authorized Representative with safe and unrestricted access to the Project in accordance with Section 6.6.2 (e) of the Agreement.	1	A	1 Day
1-4	General	Make Available Records and Documents	Make all books, records and documents available for inspection by TxDOT or its Authorized Representatives in accordance with Section 20.4.2 of the Agreement.	1	A	1 Day
1-5	General	Allow Witness and Hold Points before Proceeding with Work	Allow TxDOT or its Authorized Representative to inspect or approve where required by the Contract Documents in accordance with Section 6.6.2 (c) of the Agreement before proceeding with Work.	1	C	None
1-6	General	Prepare or Deliver a Submittal	Prepare, implement, maintain, update or timely deliver any Submittal required by, or compliant with, any Technical Provision Section or the Agreement.	1	B	7 Days

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-7	General	Respond to TxDOT Comments and Objections to a Submittal	Respond to TxDOT's comments or objections or modify a Submittal in accordance with Section 4.1.7 (b) of the Agreement.	1	A	7 Days
1-8	General	Allow TxDOT Review of Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity as required by Section 4.5.1 of the Agreement.	1	A	7 Days
1-9	General	Deliver Governmental Approval	Deliver to TxDOT prior to NTP 2 any executed copy of a Governmental Approval as required by Section 4.5 of the Agreement.	1	B	7 Days
1-10	General	Provide Verification of Insurance Coverage	Provide TxDOT with a copy of any insurance certificate or evidence of payment of any premium all in accordance with Section 9.1.4 of the Agreement.	2	B	7 Days
1-11	General	Implement Directive Letter	Proceed immediately to implement the requirements of a Directive Letter in accordance with Section 12.1.1 of the Agreement.	3	A	7 Days
1-12	General	Implementation of a Safety Compliance Order	Implement and perform a Safety Compliance Order in accordance with Section 23.1.4 of the Agreement.	2	A	3 Days
1-13	Contracting and Labor Practices	Comply with Reporting for Federal Requirements	Report compliance with or comply with the reporting requirements of any of the Federal Requirements in Exhibit 3 of the Agreement.	2	B	30 Days

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-14	Contracting and Labor Practices	Adopt Policies of Ethical Standards	Implement written policies for ethical standards within 90 days after the Effective Date in accordance with Section 7.8 of the Agreement.	2	B	14 Days
1-15	Contracting and Labor Practices	Comply with DBE Reporting Requirements	Comply with the reporting requirements or any requirement of the DBE Performance Plan in accordance with Section 7.1 and Exhibit 7 of the Agreement.	2	B	14 Days
1-16	Contracting and Labor Practices	Comply with Subcontractor Reporting Requirements	Comply with any of the Subcontractor reporting requirements in accordance with Section 7.3.2 of the Agreement.	2	B	14 Days
1-17	Contracting and Labor Practices	Submit Design-Build Contract before Execution	Submit to TxDOT for review and comment a true and complete copy of a Design-Build Contract before execution in accordance with Section 7.3.9 of the Agreement.	2	B	14 Days
1-18	Project Management	Submit or Revise PMP when Required	Develop and submit a part of, or change or addition or revision to, the PMP at the time required all in accordance with Section 6.4 of the Agreement and Attachment 2-1 of the Technical Provisions.	1	B	14 Days
1-19	Project Management	Audit PMP when Required	Carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan in accordance with Section 6.4.7 of the Agreement.	1	B	7 days
1-20	Project Management	Have PMP Approved before Starting Work	Have the relevant part of the PMP approved by TxDOT prior to commencement of any Work governed by the PMP in accordance with Section 6.4.4 of the Agreement.	2	B	7 Days

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-21	Project Management	Comply with PMP or QMP	Comply with a requirement, process or procedure set forth in the approved PMP (including any part of the QMP) in accordance with Section 2 of the Technical Provisions.	1	B	7 Days
1-22	Project Management	Comply with Quality Reporting	Cause the CQAF to comply with any of the reporting, recording keeping or documentation requirements in accordance with Section 2.2.5.2 of the Technical Provisions.	1	B	7 Days
1-23	Project Management	Cause Subcontractor Compliance With PMP	Cause a Subcontractor to comply with the applicable requirement, process or procedure of the approved PMP in accordance with Section 6.4.8 of the Agreement.	1	B	7 Days
1-24	Project Management	Establish and Maintain Document Management System	Establish and maintain the EDMS in accordance with Section 2.1.2.1 of the Technical Provisions.	1	A	7 Days
1-25	Project Management	Comply with Inspection and Testing Frequency	Comply with the requirements of the QMP as regards the timing, quantities represented or frequency of testing in accordance with Section 2.2.5 of the Technical Provisions.	2	B	2 Days
1-26	Project Management	Comply with Safety and Health Plan	Observe a requirement of the Safety and Health Plan or carry out any Work in contravention of (or in absence of) the Safety and Health Plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 2.5 of the Technical Provisions.	3	A	1 Day

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-27	Project Management	Comply with Progress Meetings	Comply with the requirements for progress meetings in accordance with Section 6.6.4 of the Agreement.	1	A	2 Days
1-28	Project Management	Fulfill Other Meeting Obligations	Comply with any obligations as set forth within the Technical Provisions with respect to issue of agenda, meeting attendance, draft or final meeting minutes.	1	A	2 Days
1-29	Project Management	Provide a Lane Closure Notice	Provide a Lane Closure notice in accordance with Section 18.3.1 of the Technical Provisions.	1	B	1 Day
1-30	Environmental Compliance	Comply with Dust Control Requirements	Take measures to minimize or mitigate the effects of dust in accordance with Section 4.6 of the Technical Provisions.	1	B	4 Hours
1-31	Environmental Compliance	Maintain and Update CEPP	Maintain and update the complete Comprehensive Environmental Protection Program (CEPP) as required by Section 4.3 of the Technical Provisions.	2	A	7 Days
1-32	Environmental Compliance	Follow the CEPP	Follow the CEPP or any of its constituent parts for any Work activity as required by Section 4.3 of the Technical Provisions.	1	B	1 Day
1-33	Environmental Compliance	Permit TxDOT to Approve Environmental Submittals	Permit TxDOT to review and approve Submittals for environmental compliance and / or Environmental Approvals in accordance with Section 4.2.3 of the Technical Provisions.	2	B	7 Days
1-34	Environmental Compliance	Notify TxDOT of Hazardous Materials	Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 3.14.1 of the Agreement.	2	B	1 Day

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-35	Public Information	Public Information Events	Comply with any of the requirements for and support to TxDOT in connection with any of the public information events in compliance with Section 3.2.6 of the Technical Provisions.	4	A	14 Days
1-36	Utility Adjustments	Maintain Utility Service	Maintain a utility service fully operational in accordance with Section 6.4.10 of the Technical Provisions.	3	A	Days
1-37	Utility Adjustments	Maintain Records for Utility Adjustments	Maintain a complete set of records for each utility Adjustment in accordance with Section 3.14.6 of the Agreement.	1	B	14 Days
1-38	Project ROW	Submit Documents and Records for ROW	Provide reports and supporting documentation with respect to Project ROW in accordance with Section 7.2.10 of the Technical Provisions.	7	B	7 Days
1-39	Traffic Control	Submit and Update a Traffic Management Plan	Prepare, submit to TxDOT for its approval or keep updated a Traffic Management Plan in accordance with Section 6.5.2 of the Agreement.	6	B	7 Days
1-40	Traffic Control	Meet Traffic Control Construction Requirements	Comply with any of the traffic control construction requirements as related to local access, detours, local approvals, markings and signing, utility cuts, hauling equipment, final clean up and stockpiles in accordance with Section 18.4 of the Technical Provisions.	2	A	4 Hours
1-41	Traffic Control	Submit Traffic Control Plans	Submit a Traffic Control Plan to TxDOT no later than the specified period before its planned implementation in accordance with Section 18.3.1 of the Technical Provisions.	1	B	1 Day

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-42	Traffic Control	Comply with Traffic Control Plans	Implement a traffic control measure in a manner consistent with a Traffic Control Plan as required by Section 18.3.1 of the Technical Provisions.	3	B	1 Day
1-43	Traffic Control	Timely Report of Lane Closure	Report to TxDOT no later than 24 hours after its occurrence any Lane Closure together with its duration and any applicable Lane Rental Charges.	2	B	1 Day
1-44	O&M During Construction	Ensure Timely Hazard Mitigation of Category 1 Defect	Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 19.4.5 of the Technical Provisions.	3	B	Defect Remedy Period
1-45	O&M During Construction	Ensure Timely Permanent Remedy of Category 1 Defect	Perform a permanent remedy to a Category 1 Defect in accordance with Section 19.4.5 of the Technical Provisions.	3	B	Defect Remedy Period
1-46	O&M During Construction	Ensure Timely Remedy of Category 2 Defect	Perform a permanent repair of a Category 2 Defect in accordance with Section 19.4.5 of the Technical Provisions.	1	B	Defect Remedy Period
1-47	O&M During Construction	Prevent a Category 1 Defect from Deteriorating	Prevent a Category 2 Defect from deteriorating to become a Category 1 Defect in accordance with Section 19.4.4 of the Technical Provisions.	4	C	N/A

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-48	O&M During Construction	Achieve Minimum Aggregated Asset Condition Score	Achieve an Aggregated Asset Condition Score (AACS) in any Performance Inspection greater than the minimum requirement established in the Baseline Element Condition Report in accordance with Section 19.9.8 of the Technical Provisions (Min. AACS): for any instance where: (Min. AACS – 0.5) < AACS < Min. AACS.	6	B	30 Days
1-49	O&M During Construction	Achieve Minimum Aggregated Asset Condition Score	Achieve an Aggregated Asset Condition Score (AACS) in any Performance Inspection greater than the minimum requirement established in the Baseline Element Condition Report in accordance with Section 19.9.8 of the Technical Provisions (Min. AACS): for any instance where: AACS ≤ (Min. AACS – 0.6).	9	C	None
1-50			NOT USED			
1-51			NOT USED			
1-52			NOT USED			
1-53			NOT USED			
1-54			NOT USED			

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-55	O&M During Construction	Comply with Incident Management Plan	Comply with a requirement in respect of the Incident Management Plan as required by Section 19.10.5 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligations.	4	B	7 Days
1-56	O&M During Construction	Comply with Maintenance Management Plan	Comply with a requirement, process or procedure in the Maintenance Management Plan in accordance with Section 19.6 of the Technical Provisions.	2	B	7 Days
1-57	O&M During Construction	Comply with Maintenance Management Plan	Comply with a requirement, process or procedure in the Maintenance Management Plan in accordance with Section 19.6 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation.	3	B	7 Days
1-58	O&M During Construction	Conduct General Inspections and Patrols	Conduct a General Inspection or patrol at the required frequency in accordance with Section 19.9.1 of the Technical provisions.	2	B	1 Day
1-59	O&M During Construction	Conduct Specialist Inspections	Conduct a specialist Inspection as required by Section 19.9.2 of the Technical Provisions.	2	B	7 Days
1-60	O&M During Construction	Conduct Other Inspections	Conduct any other scheduled inspection including Performance Inspections not otherwise included as a Noncompliance Event.	2	B	14 Days

Table 24-1 Noncompliance Events Before Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
1-61	O&M During Construction	Create an O&M Record	Create an O&M Record in accordance with Section 19.9.6 of the Technical Provisions.	1	A	2 Days
1-62	O&M During Construction	Use, Maintain or Update the MMS	Use, maintain or provide information updates to the Maintenance Management System in accordance with Section 19.6.9 of the Technical Provisions.	1	A	2 Days
1-63	O&M During Construction	Implement the MMS	Implement the Maintenance Management Information System in accordance with Section 19.6.9 of the Technical Provisions.	2	A	14 Days

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-1	General	Notify a Noncompliance Event	Notify TxDOT of the occurrence of any Noncompliance Event specified in this Table 24-1 in accordance with Section 13.2 of the Agreement.	2	C	None
2-2	General	Maintain a Noncompliance Event Database	Maintain a fully functional and up to date Noncompliance Events Database accessible to TxDOT in accordance with Section 13.2.1 of the Agreement.	2	A	7 Days
2-3	General	Provide Safe and Unrestricted Access to the Project	Provide TxDOT or its Authorized Representative with safe and unrestricted access to the Project in accordance with Section 6.6.2 (e) of the Agreement.	1	A	1 Day
2-4	General	Make Available Records and Documents	Make all books, records and documents available for inspection by TxDOT or its Authorized Representatives in accordance with Section 20.4.2 of the Agreement.	1	A	1 Day
2-5	General	Allow Witness and Hold Points before Proceeding with Work	Allow TxDOT or its Authorized Representative to inspect or approve where required by the Contract Documents in accordance with Section 6.6.2 (c) of the Agreement before proceeding with Work.	1	C	None
2-6	General	Prepare or Deliver a Submittal	Prepare, implement, maintain, update or timely deliver any Submittal required by, or compliant with, any Technical Provision Section or the Agreement.	1	B	7 Days

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-7	General	Respond to TxDOT Comments and Objections to a Submittal	Respond to TxDOT's comments or objections or modify a Submittal in accordance with Section 4.1.7 (b) of the Agreement.	1	A	7 Days
2-8	General	Allow TxDOT Review of Governmental Approval	Submit any application for a Governmental Approval to TxDOT for approval or review and comment prior to submitting to any Governmental Entity as required by Section 4.5.1 of the Agreement.	1	A	7 Days
2-9			NOT USED			
2-10	General	Provide Verification of Insurance Coverage	Provide TxDOT with a copy of any insurance certificate or evidence of payment of any premium all in accordance with Section 9.1.4 of the Agreement.	2	B	7 Days
2-11	General	Implement Directive Letter	Proceed immediately to implement the requirements of a Directive Letter in accordance with Section 12.1.1 of the Agreement.	3	A	7 Days
2-12	General	Implementation of a Safety Compliance Order	Implement and perform a Safety Compliance Order in accordance with Section 23.1.4 of the Agreement.	2	A	3 Days
2-13	Contracting and Labor Practices	Comply with Reporting for Federal Requirements	Report compliance with or comply with the reporting requirements of any of the Federal Requirements in Exhibit 3 of the Agreement.	2	B	30 Days
2-14			NOT USED			

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-15			NOT USED			
2-16	Contracting and Labor Practices	Comply with Subcontractor Reporting Requirements	Comply with any of the Subcontractor reporting requirements in accordance with Section 7.3.2 of the Agreement.	2	B	14 Days
2-17			NOT USED			
2-18	Project Management	Submit or Revise MMP when Required	Develop and submit a part of, or change or addition or revision to, the MMP at the time required all in accordance with Section 19.6 of the Technical Provisions.	1	B	14 Days
2-19	Project Management	Audit MMP when Required	Carry out internal audits of the Maintenance Management Plan at the times prescribed in the Project Management Plan in accordance with Section 6.4.7 of the Agreement.	1	B	7 days
2-20	Project Management	Have MMP Approved before Starting O&M Work	Have the relevant part of the MMP approved by TxDOT prior to commencement of any O&M Work governed by the MMP in accordance with Section 6.4.4 of the Agreement.	2	B	7 Days
2-21	Project Management	Comply with MMP or O&M Work QCP	Comply with a requirement, process or procedure set forth in the approved MMP (including any part of the O&M Work QCP) in accordance with Section 2 and Section 19 of the Technical Provisions.	1	B	7 Days

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-22	Project Management	Comply with Quality Reporting	Comply with any of the reporting, recording keeping or documentation requirements in accordance with Section 2.2.5.2 of the Technical Provisions.	1	B	7 Days
2-23	Project Management	Cause Subcontractor Compliance With MMP	Cause a Subcontractor to comply with the applicable requirement, process or procedure of the approved MMP in accordance with Section 6.4.8 of the Agreement.	1	B	7 Days
2-24	Project Management	Establish and Maintain Document Management System	Establish and maintain the EDMS in accordance with Section 2.1.2.1 of the Technical Provisions consistent with the O&M Work Document Management Plan in accordance with Section 19.6.4 of the Technical Provisions.	1	A	7 Days
2-25	Project Management	Comply with Inspection and Testing Frequency	Comply with the requirements of the O&M Work QCP as regards the timing, quantities represented or frequency of testing in accordance with Section 2.2.5 of the Technical Provisions.	2	B	2 Days
2-26	Project Management	Comply with Maintenance Safety Plan	Observe a requirement of the Maintenance Safety Plan or carry out any Work in contravention of (or in absence of) the Maintenance Safety Plan or in a manner that represents a hazard to project workers or the general public in accordance with Section 19.6.6 of the Technical Provisions.	3	A	1 Day

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-27	Project Management	Comply with Progress Meetings	Comply with the requirements for progress meetings in accordance with Section 6.6.4 of the Agreement.	1	A	2 Days
2-28	Project Management	Fulfill Other Meeting Obligations	Comply with any obligations as set forth within the Technical Provisions with respect to issue of agenda, meeting attendance, draft or final meeting minutes.	1	A	2 Days
2-29	Project Management	Provide a Lane Closure Notice	Provide a Lane Closure notice in accordance with Section 18.3.1 of the Technical Provisions.	1	B	1 Day
2-30	Environmental Compliance	Comply with Dust Control Requirements	Take measures to minimize or mitigate the effects of dust in accordance with Section 4.6 of the Technical Provisions.	1	B	4 Hours
2-31			NOT USED			
2-32			NOT USED			
2-33			NOT USED			
2-34	Environmental Compliance	Notify TxDOT of Hazardous Materials	Notify TxDOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 3.14.1 of the Agreement.	2	B	1 Day
2-35			NOT USED			
2-36			NOT USED			
2-37			NOT USED			
2-38			NOT USED			

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-39	Traffic Control	Submit and Update a Traffic Management Plan	Prepare, submit to TxDOT for its approval or keep updated a Traffic Management Plan in accordance with Section 6.5.2 of the Agreement.	6	B	7 Days
2-40	Traffic Control	Meet Traffic Control Construction Requirements	Comply with any of the traffic control construction requirements as related to local access, detours, local approvals, markings and signing, utility cuts, hauling equipment, final clean up and stockpiles in accordance with Section 18.4 of the Technical Provisions.	2	A	4 Hours
2-41	Traffic Control	Submit Traffic Control Plans	Submit a Traffic Control Plan to TxDOT no later than the specified period before its planned implementation in accordance with Section 18.3.1 of the Technical Provisions.	1	B	1 Day
2-42	Traffic Control	Comply with Traffic Control Plans	Implement a traffic control measure in a manner consistent with a Traffic Control Plan as required by Section 18.3.1 of the Technical Provisions.	3	B	1 Day
2-43	Traffic Control	Timely Report of Lane Closure	Report to TxDOT no later than 24 hours after its occurrence any Lane Closure together with its duration and any applicable Lane Rental Charges.	2	B	1 Day
2-44	O&M After Substantial Completion	Ensure Timely Hazard Mitigation of Category 1 Defect	Address a Category 1 Defect such that the hazard to Users is mitigated in accordance with Section 19.4.5 of the Technical Provisions.	3	B	Defect Remedy Period

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-45	O&M After Substantial Completion	Ensure Timely Permanent Remedy of Category 1 Defect	Perform a permanent remedy to a Category 1 Defect in accordance with Section 19.4.5 of the Technical Provisions.	3	B	Defect Remedy Period
2-46	O&M After Substantial Completion	Ensure Timely Remedy of Category 2 Defect	Perform a permanent repair of a Category 2 Defect in accordance with Section 19.4.5 of the Technical Provisions.	1	B	Defect Remedy Period
2-47	O&M After Substantial Completion	Prevent a Category 1 Defect from Deteriorating	Prevent a Category 2 Defect from deteriorating to become a Category 1 Defect in accordance with Section 19.4.4 of the Technical Provisions.	4	C	N/A
2-48	O&M After Substantial Completion	Achieve Minimum Aggregated Asset Condition Score	Achieve an Aggregated Asset Condition Score (AACS) in any Performance Inspection greater than 3.5 in accordance with Section 19.9.8 of the Technical Provisions: for any instance where: $3.0 < AACS < 3.5$.	4	B	30 Days
2-49	O&M After Substantial Completion	Achieve Minimum Aggregated Asset Condition Score	Achieve an Aggregated Asset Condition Score (AACS) in any Performance Inspection greater than 3.5 in accordance with Section 19.9.8 of the Technical Provisions: for any instance where: $2.0 < AACS \leq 2.9$.	6	C	None

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-50	O&M After Substantial Completion	Achieve Minimum Aggregated Asset Condition Score	Achieve an Aggregated Asset Condition Score (AACS) in any Performance Inspection greater than 3.5 in accordance with Section 19.9.8 of the Technical Provisions: for any instance where: AACS ≤ 2.0.	8	C	None
2-51	O&M After Substantial Completion	Achieve Minimum Element Category Asset Condition Score	Achieve an Element Category Asset Condition Score (ECACS) in any Performance Inspection greater than 3.5 in accordance with Section 19.9.8 of the Technical Provisions: for each Element Category where: 3.0 < ECACS < 3.5.	2	B	30 Days
2-52	O&M After Substantial Completion	Achieve Minimum Element Category Asset Condition Score	Achieve an Element Category Asset Condition Score (ECACS) in any Performance Inspection greater than 3.5 in accordance with Section 19.9.8 of the Technical Provisions: for each Element Category where: 2.0 < ECACS < 3.0.	4	C	None
2-53	O&M After Substantial Completion	Achieve Minimum Element Category Asset Condition Score	Achieve an Element Category Asset Condition Score (ECACS) in any Performance Inspection greater than 3.5 in accordance with Section 19.9.8 of the Technical Provisions: for each Element Category where: ECACS ≤ 2.0.	6	C	None

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-54	O&M After Substantial Completion	Improve Asset Condition Score	Improve within one month to a condition at or above an Asset Condition score of 3.5, any Element that had deteriorated below an Asset Condition score of 3.5 at the most recent Performance Audit.	1	B	14 Days
2-55	O&M After Substantial Completion	Comply with Incident Management Plan	Comply with a requirement in respect of the Incident Management Plan as required by Section 19.10.5 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligations.	4	B	7 Days
2-56	O&M After Substantial Completion	Comply with Maintenance Management Plan	Comply with a requirement, process or procedure in the Maintenance Management Plan in accordance with Section 19.6 of the Technical Provisions.	2	B	7 Days
2-57	O&M After Substantial Completion	Comply with Maintenance Management Plan	Comply with a requirement, process or procedure in the Maintenance Management Plan in accordance with Section 19.6 of the Technical Provisions where the failure impacts or has potential to impact on the level of service provided to Users or TxDOT's ability to meet its obligation.	3	B	7 Days
2-58	O&M After Substantial Completion	Conduct General Inspections and Patrols	Conduct a General Inspection or patrol at the required frequency in accordance with Section 19.9.1 of the Technical provisions.	2	B	1 Day

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-59	O&M After Substantial Completion	Conduct Specialist Inspections	Conduct a Specialist Inspection as required by Section 19.9.2 of the Technical Provisions.	2	B	7 Days
2-60	O&M After Substantial Completion	Conduct Bridge / Structures Inspection	Conduct a bridge inspection for any of the bridges in the Roadway Section for which such inspection is required in accordance with Section 19.9.4 of the Technical Provisions.	2	B	14 Days
2-61	O&M After Substantial Completion	Provide access system for TxDOT use for the New Harbor Bridge	Provide an access system available to TxDOT in compliance with the requirements of Section 19.9.3 of the Technical Provisions.	2	A	1 Day
2-62	O&M After Substantial Completion	Provide access system for TxDOT use for the New Harbor Bridge	Provide an access system available to TxDOT in compliance with the requirements of Section 19.9.3 of the Technical Provisions.	2	A	1 Day
2-63	O&M After Substantial Completion	Prepare a condition survey report of the New Harbor Bridge	Following receipt of the routine biennial inspection and other available resources, prepare a condition survey report in accordance with Section 19.9.3 of the Technical Provisions.	2	A	14 Days
2-64	O&M After Substantial Completion	Undertake a Special Bridge Inspection for the New Harbor Bridge	Undertake a Special Bridge Inspection for the New Harbor Bridge in accordance with Section 19.9.6 of the Technical Provisions.	2	A	14 Days

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-65	O&M After Substantial Completion	Conduct Other Inspections	Conduct any scheduled inspection not otherwise included as a Noncompliance Event including Performance Inspections.	2	B	14 Days
2-66	O&M After Substantial Completion	Create an O&M Record	Create an O&M Record in accordance with Section 19.9.7 of the Technical Provisions.	1	A	2 Days
2-67	O&M After Substantial Completion	Use, Maintain or Update the MMS	Use, maintain or provide information updates to the Maintenance Management System in accordance with Section 19.6.9 of the Technical Provisions.	1	A	2 Days
2-68	O&M After Substantial Completion	Implement the MMS	Implement the Maintenance Management Information System in accordance with Section 19.6.9 of the Technical Provisions.	2	A	14 Days
2-69	O&M After Substantial Completion	Perform Renewal Work when Required	Perform Renewal Work in accordance with the schedule set forth in the O&M Work Schedule in accordance with Section 5.8 of the Agreement and Section 19.5 of the Technical Provisions (for each instance of Renewal Work).	2	A	30 Days
2-70	O&M After Substantial Completion	Prepare Maintenance Transition Plan	Prepare, submit or update a Maintenance Transition Plan in accordance with Section 19.8 of the Technical Provisions.	2	A	14 Days
2-71	O&M After Substantial Completion	Prepare the Handback Plan	Prepare the Handback Plan in accordance with the requirements of Section 19.14.24 of the Technical Provisions.	2	B	14 Days

Table 24-2 Noncompliance Events After Substantial Completion						
Ref.	**Main Heading**	**Sub-Heading**	**Failure to:**	**Number of Points**	**Assessment Category**	**Cure Period**
2-72	O&M After Substantial Completion	Residual Life Inspection	Perform a Residual Life Inspection in accordance with Section 19.14.4 of the Technical Provisions.	4	B	14 Days

[1] **EXHIBIT 25**

FORM OF O&M PERFORMANCE BOND

US 181 Harbor Bridge Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Comprehensive Development Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of _____, 20__ (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon Substantial Completion, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations related to the O&M Work under the Contract Documents.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] ***[amount calculated as set forth in Section 8.5.1 of the Contract]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond on the date that is one year after the end of the Term and upon such date thereafter that all of the conditions to release set forth in Section 8.5.2 of the Contract have occurred.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. Principal and the Surety hereby agree to pay to Obligee $_____ [***amount equal to the lesser of (i) twenty percent (20%) of the Bonded Sum hereinabove set forth or (ii) the amount of $20,000,000 (escalated in accordance with the methodology set forth in Section 8.5.5 of the Contract)***], as

cash collateral for the performance of Principal's obligations under the Contract Documents, after the occurrence of any of the following:

a. failure of Principal to provide a replacement O&M Performance Bond or O&M Payment Bond, as applicable, in the adjusted amount required under Section 8.5.1 of the Contract or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract at least 30 days prior to each five-year anniversary of the Substantial Completion Date;

b. failure of Principal to provide a replacement O&M Performance Bond or O&M Payment Bond or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract at least 30 days prior to the expiration of the then current O&M Performance Bond or O&M Payment Bond, as applicable; or

c. failure of Principal to provide a replacement O&M Performance Bond or O&M Payment Bond or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract within 10 days after this Bond becomes ineffective or the Surety no longer meets the requirements set forth in Section 8.5.4 of the Contract.

Principal agrees and acknowledges that such cash collateral is to secure the performance of Principal under the Contract Documents as a result of Principal's failure to satisfy the O&M Security obligations under the Contract to which Principal agreed upon executing the Contract, and may be used to compensate TxDOT for the damages specified in Section 7 of this bond, including TxDOT's costs to procure a substitute Developer and any amounts paid to such substitute Developer in excess of the unpaid balance of the Contract.

Any cash collateral not otherwise utilized by TxDOT as permitted herein shall be returned to the Principal (or in the case the Surety made payment under Section 2 of this Bond, to the Surety) upon the earlier of (i) delivery by Principal of replacement O&M Bonds meeting the requirements of Section 8.5 of the Contract or the O&M Letter of Credit and O&M Guaranty in accordance with Sections 8.3, 8.4 and 8.7 of the Contract or (ii) the date on which the O&M Bonds would otherwise be released in accordance with Section 8.5 of the Contract.

3. This Bond specifically guarantees the performance of each and every obligation of Principal related to the O&M Work under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for payment in full of all Liquidated Damages, Noncompliance Charges and Lane Rental Charges as specified in the Contract Documents, but not to exceed the Bonded Sum.

4. The guarantees contained herein shall survive the expiration or termination of the O&M Period with respect to those obligations of Principal under the Contract Documents that survive such expiration or termination.

5. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents (other than under the circumstances provided in Section 2 above), provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the Contract; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the O&M Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the O&M Price for the applicable O&M Period incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

6. If Surety does not proceed as provided in Paragraph 5 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 5.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

7. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the O&M Price for the applicable O&M Period to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective O&M Work and completion of the O&M Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and

c. all Liquidated Damages, Noncompliance Charges and Lane Rental Charges under the Contract.

8. No alteration, modification or supplement to the Contract Documents or the nature of the O&M Work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time.

9. In no event shall the term of this bond be beyond the [__]***[term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Term may be for a term not less than 1 year.]*** anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Principal to file a replacement bond as required under Section 8.5 of the Contract or a replacement O&M Letter of Credit and O&M Guaranty (if required) meeting the requirements of Sections 8.3, 8.4 and 8.7 of the Contract shall constitute an obligation to pay to Obligee $_____ [***amount equal to the lesser of (i) twenty percent (20%) of the Bonded Sum hereinabove set forth, or (ii) the amount of $20,000,000 (escalated in accordance with the methodology set forth in Section 8.3.2(b) of the Contract)***], as cash collateral , in accordance with Section 2 above.

10. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

11. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201[__]

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 26

FORM OF O&M PAYMENT BOND

US 181 Harbor Bridge Project

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Comprehensive Development Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of _____, 20__ (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon Substantial Completion, Principal is required to furnish a bond (this "Bond") guaranteeing payment in full to all Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $[_____] ***[amount calculated as set forth in Section 8.5.1 of the Contract]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the O&M Work, then Surety shall pay for the same in an amount in the aggregate of all Subcontracts not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.5.3 of the Contract.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, supplement or extension of time.

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the O&M Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

5. In no event shall the term of this bond be beyond the [___]***[term of the bond may not be less than 5 years, except that a bond in the amount required for the last year after the Term may be for a term not less than 1 year.]*** anniversary of the execution date without the express written consent of the Surety. Surety will have no obligation to extend or replace this bond for additional periods of time. Failure of the Surety to extend this bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 201[__].

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

By:_____
Name
Title:
Address: