

EXHIBIT A

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this Agreement and the Technical Provisions, they shall have the meanings set forth below:

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
ASTM	American Society of Testing and Materials
ATA	American Trucking Association
AVC	Automatic Vehicle Classification
CADD	Computer Aided Drafting and Design
CD-R	Compact Disc Recordable
CD ROM	Compact Disc Read Only Memory
CFR	Code of Federal Regulations
CQP	Civil Construction Quality Plan
CSC	Customer Service Center
CSJ	Control Section Job
CSTM&P	Materials and Pavements Section of TxDOT Construction Division
DBE	Disadvantaged Business Enterprise
DDD	Detailed Design Documentation
EPD	Escrowed Proposal Documents
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
HCTRA	Harris County Toll Road Authority
ID	Identification
IQCDM	Installation Quality Control Deputy Manager
ITP	Instructions to Proposers
LSSL	Licensed State Land Surveyor
MOMS	Maintenance On-Line Management System
MPH	Miles Per Hour
MSE	Mechanically Stabilized Earth
MTP	Main Toll Plaza
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act

NFPA	National Fire Protection Association
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NTP	Notice to Proceed
OCR	Contract Compliance Section of the Office of Civil Rights of the Texas Department of Transportation
OSHA	Occupational Safety and Health Administration
OVT	Owner Verification Tests
PCO	Potential Change Order
PDR	Preliminary Design Review
PHS	Project Host Server
PM	Programt Manager
PMP	Project Management Plan
QA	Quality Acceptance
QC	Quality Control
QMP	Quality Management Plan
QS	Qualifications Submittal
RFP	Request for Proposals
RMA	Regional Mobility Authority
ROD	Record of Decision
ROE	Right of Entry
ROW	Right-of-Way
RPLS	Registered Professional Land Surveyor
RTP	Ramp Toll Plazas
SH	State Highway
SIR	Site Investigation Report
SWPP	Storm Water Pollution Prevention Plan
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
TL	Testing Level
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TSS	Toll Systems Services
TSSQCM	Toll Systems Services Quality Control Manager
TSSQP	Toll Systems Services Quality Program
TSSQRM	Toll Systems Quality Review Manager

TxDOT	Texas Department of Transportation
UL	Underwriters Laboratories, Inc.
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
VMS	Variable Message Sign
WBS	Work Breakdown Structure

AASHTO Guidelines shall mean the standards for design and construction of roadways and related facilities promulgated by American Association of State Highway and Transportation Officials.

Acceleration Costs shall mean those fully documented increased costs reasonably incurred by Integrator (that is, costs over and above what Integrator would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

Act shall have the meaning set forth in Recital B of this Agreement.

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of Schematic ROW, that may be acquired in connection with a Project Segment.

Affiliate shall mean: (1) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Integrator or any Major Participant, and (2) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by Integrator, any Major Participant or any Affiliate of Integrator under clause (1) of this definition. For purposes of this definition the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

Agreement shall mean that certain Statewide Toll System Integration and Maintenance Agreement to which this Exhibit A is attached, executed by TxDOT and Integrator, including any and all amendments thereto.

As-Built Documents shall mean the documents to be provided by Integrator as described in Section 2.2.12 of the Technical Provisions.

Authorized Representative shall mean the individuals authorized to make decisions and bind the parties on matters relating to the Contract Documents pursuant to Section 24.5.1 of this Agreement.

Base Month shall mean the month in which this Agreement is executed.

Baseline Schedule shall mean the fixed Project Schedule for a Project Segment, submitted within 90 days of NTP for such Project Segment, showing the order in which the Integrator proposes to carry out the Work, the original planned start and finished dates of activities, and the contemplated dates for completing all work. It is the standard by which certain aspects of Project performance as to the applicable Project Segment will be measured, and will be used to compare with current planned dates to determine delays. The Baseline Schedule will also be used to calculate budgeted costs of Work scheduled for earned-value analysis.

Basic Configuration shall mean, with respect to each Project Segment, the following elements defining such Project Segment, as set forth in the Owner Design Documents for such Project Segment:

- (a) the number of tolled lanes,
- (b) the number of lane miles,
- (c) the location and unique geographical constraints,
- (d) the approximate location of the toll collection points,
- (e) the approximate location of ramps,
- (f) the approximate location of interchanges and the type of interchanges,
- (g) the approximate right-of-way limits; and
- (h) the approximate location of manual toll plazas, if any

Best Management Practices shall have the meaning set forth in Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

Business Day shall mean days on which TxDOT is officially open for business.

Change in Law shall mean the enactment, adoption, modification, repeal or other change in any Law that occurs after the issuance of an NTP with respect to any Project Segment, including any change in the judicial or administrative interpretation of any Law, or adoption of any new Law, which is materially inconsistent with Laws in

effect on the NTP issuance date, but excluding any such change in or new Law which was passed or adopted but not yet effective as of the NTP issuance date.

Change Order shall mean a written order issued by TxDOT to Integrator delineating changes in the requirements of the Contract Documents in accordance with Section 13 of this Agreement and establishing, if appropriate, an adjustment to a Price, a System Acceptance Deadline, a Punch List Completion Deadline or a Final Acceptance Deadline.

Civil Construction Quality Plan (CQP) shall mean the comprehensive program for assuring construction quality control under which monitoring of construction activities is to be performed to maintain and ensure compliance with Environmental Laws and Contract Documents as more particularly described in Section 8.1 of the Technical Provisions.

Civil Work Plan shall mean a site layout (including utility work by Integrator beyond the limits of the Tolling Zone), construction phasing, traffic control measures, lane closures requirements for those civil work elements outlined in Section 4.2.15 of the Technical Provisions as well as all required Toll Zone equipment, housings and gantries.

Claim shall mean a separate demand by Integrator, which is disputed by TxDOT, for a time extension under this Agreement, or payment of money or damages arising from work done on behalf of Integrator in connection with this Agreement.

Code Escrow Agent shall have the meaning set forth in Section 21.8.4(a) of this Agreement.

Communications shall mean, for purposes of Section 2.6 of the Technical Provisions, all correspondence, minutes of meetings, and non-internal documents pertaining to the Project reflecting communications with, but not limited to, TxDOT and its contractors, consultants, agents and representatives, Utility Owners, communities, Governmental Entities and members of the public.

Completion Deadline shall mean a System Acceptance Deadline, Punch List Acceptance Deadline and/or Final Acceptance Deadline, as the case may be.

Configuration Management Plan shall mean the approved plan prepared by Integrator pursuant to Section 4.1.7.4 of the Technical Provisions.

Construction Documents shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for installation, integration and construction of each Project Segment in accordance with the Contract Documents.

Contract Documents shall mean this Agreement, including all exhibits, and the other documents listed in Section 1.2 of this Agreement, including all amendments to

the foregoing, all Change Orders issued, and all Project Segment Supplements, including all amendments to a Project Segment Supplement and Change Orders issued with respect to a Project Segment Supplement.

Critical Path shall mean each critical path on the Project Schedule for a Project Segment, which ends on the respective System Acceptance Deadline, Punch List Acceptance Deadline or Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for such System Acceptance, Punch List Acceptance or such Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest path(s) through the applicable Project Schedule.

Critical Path Method (CPM) shall mean a method for scheduling the Work where all major components of the Work are laid out in a diagram to show the proper sequencing of tasks and the necessary time required for each task, showing which tasks are critical to each other.

CSC Systems shall have the meaning set forth in Section 1.1 of the Technical Provisions.

Day shall mean calendar days unless otherwise expressly specified.

DBE Performance Plan shall mean Integrator's plan for meeting the DBE participation goals for the Project, as such plan is described in Special Provision _____, provided as Exhibit G to this Agreement.] **[NTD: Final DBE Requirements to be confirmed.]**

DBE Program shall mean that program designed by TxDOT for federally assisted projects as such program is described at: _____ **[NTD: Web address to be provided.]**

Default Draw shall have the meaning assigned such term in Section 8.2.3 of this Agreement.

Delay Event shall have the meaning set forth in Section 16.3 of this Agreement.

Deliverable means an end product or other item/element/submission requiring TxDOT concurrence and/or acceptance.

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals, including but not limited to the Detailed Design Documents, necessary for, or related to, the design, installation, integration, testing and maintenance of each Project Segment in accordance with the Contract Documents, the Governmental Approvals and applicable Law.

Design Exception shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design

Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

Designated TxDOT Compatible Projects shall have the meaning set forth in Recital A of this Agreement.

Detailed Design Documentation (DDD) shall have the meaning set forth in Section 4.1 of the Technical Provisions.

Developed Intellectual Property shall have the meaning set forth in Section 21.7 of this Agreement.

Deviations shall mean any change, deviation, modification or alteration from the requirements of the Contract Documents, applicable Law and the Governmental Approvals.

Differing Site Condition shall mean: (1) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Documents listed in Exhibit N, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (2) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in this Agreement. The term shall specifically exclude all such conditions of which Integrator had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes (a) changes in surface topography; (b) variations in subsurface moisture content; (c) Utility facilities; (d) Hazardous Materials, including contaminated groundwater; and (e) any conditions which constitute or are caused by a Force Majeure Event.

Directive Letter shall have the meaning set forth in Section 13.1.1.2 of this Agreement.

Disadvantaged Business Enterprise or **DBE** shall have the meaning set forth in Exhibit G to this Agreement.

Dispute shall mean a “claim,” as such term is used and defined in Texas Administrative Code Section 9.1, as the same may be amended from time to time.

Documentation shall mean all documents (including but not limited to Design Documents, correspondence, communications, electronic files and records) required to be created, maintained or submitted by Integrator pursuant to the Technical Provisions.

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit K to this Agreement.

Effective Date shall mean the date of this Agreement or such other date as shall be mutually agreed upon in writing by TxDOT and Integrator.

End of Maintenance Term Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.4 of this Agreement.

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of any portion of the Project, including those approvals identified in Section 5.1 of the Technical Provisions.

Environmental Law shall mean any Law that regulates or governs the use, generation, manufacture, storage, handling, treatment, recycling, transportation, or disposal of Hazardous Material or pollution or protection of human health, safety, and the environment, including: (1) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq.*); (2) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*); (3) the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*); (4) the Toxic Substances Control Act (15 U.S.C. §§ 2601, *et seq.*); (5) the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*); (6) the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*); (7) the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001, *et seq.*); (8) the Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*); (9) the Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Facility Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Nonmanufacturing Facilities Community Right-To-Know-Act); (10) the Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991); (11) the Texas Water Code; (12) the Texas Parks and Wildlife Code; (13) the Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act); (14) the Texas Asbestos Health Protection Act (Article 4477-3a, Texas Civil Statutes); (15) the Surface Coal Mining and Reclamation Act (Article 5920-11, Texas Civil Statutes); and (16) any other analogous state, local or municipal statutes, all as amended, enacted or as they may be amended or enacted from time to time. The term "Environmental Law" shall not include the Occupational Safety and Health Act (29 U.S.C. Section 651, *et seq.*).

Error shall mean an error, omission, inconsistency, inaccuracy, deficiency or other defect.

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 21.1 of this Agreement.

Event of Default shall have the meaning set forth in Section 16.2 of this Agreement.

Expendable Materials shall mean construction materials (e.g. lumber, steel, concrete, re-bar) and equipment (e.g. shovels, power tools, office equipment, computers) that are completely incorporated into the Work or have no salvage value at completion of the Work.

Federal Requirements shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit D to this Agreement.

Final Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions with respect to a Project Segment set forth in Section 20.3 of this Agreement.

Final Acceptance Deadline shall have the meaning set forth in Section 4.2.3 of this Agreement.

Final Design shall mean, depending on the context: (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

Final Design Documents shall mean the complete final Toll System Design Documents, including but not limited to construction, installation and integration drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals needed by Integrator to build, install, integrate, test and maintain each Project Segment and satisfying the requirements presented in Section 4 of the Technical Provisions.

Final Draw Request shall mean the written request for Final Payment under this Agreement as described in Section 12.4 of this Agreement.

Final Maintenance Payment shall mean, for each Project Segment, payment by TxDOT of the final installment of the Maintenance Price with respect to the maintenance of such Project Segment.

Final Maintenance Payment Draw Request shall mean the written request for Final Maintenance Payment under this Agreement as described in Section 12.5 of this Agreement.

Final Payment shall mean, for each Project Segment, payment by TxDOT of the final installment of the Price with respect to the design, construction, integration and installation of such Project Segment.

Final ROW shall mean, with respect to each Project Segment, the Schematic ROW and the Additional Properties applicable thereto, but excluding therefrom any

portion of the Schematic ROW eliminated from such Project Segment by a Change Order.

Fiscal Year shall mean the calendar year or any other consecutive 12-month period selected by Integrator and approved by TxDOT.

Float shall mean generally the difference between early completion times and late completion times for activities as shown on a Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of “Work”), as more particularly described in Section 4.3.2 of this Agreement.

Force Majeure Event shall mean any of the events listed in clauses (a) through (m) below, subject to the exclusions listed in clauses (i) through (vii) below, which materially and adversely affects Integrator’s obligations, provided such events are beyond the control of the Integrator-Related Entities and are not due to an act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any of the Integrator-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Integrator:

- (a) Any earthquake, tornado, hurricane or other natural disaster;
- (b) Any epidemic, blockade, rebellion, terrorism, war, riot, act of sabotage or civil commotion;
- (c) (Not used);
- (d) With respect to any Project Segment , the discovery at, near or on the Final ROW of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, documents made available or provided to the Integrator by TxDOT prior to the date upon which the NTP for that Project Segment was issued, was not otherwise known to Integrator prior to such date and would not have become known to Integrator by undertaking reasonable investigation prior to such date;
- (e) [Not used];
- (f) With respect to any Project Segment, the discovery at, near or on the Final ROW of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the date upon which the NTP for that Project Segment was issued);
- (g) Any Change in Law, which (1) requires a material modification of the design of the applicable Project Segment, (2) requires Integrator to obtain a new major State or federal environmental approval not previously

required for the applicable Project Segment, (3) results in an increase in Integrator's costs directly attributable to the Change in Law of at least \$100,000, (4) results in imposition of additional mitigation requirements on the applicable Project Segment due to impacts on archaeological, paleontological, biological or cultural resources, or (5) specifically targets the applicable Project Segment or Integrator;

- (h) (Not used);
- (i) With respect to any Project Segment, any spill of Hazardous Material by a third party who is not a Integrator-Related Entity which occurs after the date upon which the NTP for that Project Segment was issued and is required to be reported to a Governmental Entity and which renders use of the roadway or construction area unsafe absent assessment, containment and/or remediation;
- (j) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any of the Integrator-Related Entities;
- (k) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from any modification in the Final Design;
- (l) A traffic incident caused by TxDOT or a third party that causes physical damage to the System; and
- (m) From and after Final Acceptance, malicious or other acts by third parties that Integrator is not required to control or supervise causing physical damage or similar occurrence to the System, including vandalism or theft.

The term "**Force Majeure Event**" shall be limited to the matters listed above and shall apply only on an individual Project Segment basis. The occurrence of a Force Majeure Event as to any Project Segment shall not apply to other Project Segments and aspects of the Project unless the same event has occurred as to such other Project Segments and aspects. "**Force Majeure Event**" specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;

- (ii) except as provided in clause (b) and clause (m) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (g) or (j) above;
- (v) any increased costs or delays related to failure to obtain any approval, work or other action from a Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (m) above;
- (vi) the presence at, near or on a Project Site, as of the date upon which the applicable NTP is issued (with respect to any Project Segment), of any Hazardous Material, including substances disclosed in documents made available or provided to the Integrator by TxDOT prior to the date upon which the NTP is issued (with respect to any Project Segment), as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (m) above.

Functional Availability shall have the meaning set forth in Section 4.1.2 of the Technical Provisions.

Generally Accepted Accounting Principles shall mean such accepted accounting practice as, in the opinion of the accountant, conforms at the time to a body of generally accepted accounting principles.

Governmental Approval shall mean any permit, license, consent, authorization, waiver, variance or other approval, guidance, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize Work, but excluding any such approvals given by or required from any Governmental Entity in its capacity as a Utility Owner.

Governmental Entity shall mean any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than TxDOT.

Hardware shall mean the physical, tangible and permanent components of a computer or data processing system.

Hazardous Materials shall mean (i) any chemical, material or substance at any time defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment.

Hazardous Materials Management shall mean sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

Hazardous Materials Management Plan shall mean the Integrator’s Plan for Hazardous Materials Management if Hazardous Materials or recognized Potential Environmental Conditions are encountered in connection with a Project Segment.

Host Computer shall have the meaning set forth in Section 4.2.6 of the Technical Provisions.

Hypothetical Maintenance Price shall mean the hypothetical maintenance price for Project Segments, as submitted with the Proposal and set forth on Exhibit U-5.

Hypothetical Project Delivery Price shall mean the hypothetical project delivery price for Project Segments, as submitted with the Proposal and set forth in Exhibit U-4.

Hypothetical Project Segment Scenario shall mean the hypothetical Project Segment scenario set forth on Exhibit U-3 upon which the Hypothetical Project Delivery Price and the Hypothetical Maintenance Price are based.

Indemnified Parties shall mean TXDOT, the State and their respective successors, assigns, officeholders, officers, directors, agents, representatives,

consultants and employees (including the Program Manager), and, with respect to any Project Segment, any regional mobility authority that owns or operates such Project Segment, and any Integrator under contract to TxDOT with respect to such Project Segment.

Initial NTP has the meaning set forth in Recital G of this Agreement.

Initial Project Schedule shall mean, with respect to each Project Segment, the original Project Segment Schedule submitted in response to a Project Segment Supplement notice.

Installation and Testing shall mean the TSS activities that are required to install System Software, Hardware and equipment and test its performance.

Instructions to Proposers shall mean the Instructions to Proposers issued by TxDOT on [_____, 2011] as part of the RFP with respect to the Project, including all attachments thereto and any subsequent addenda.

Integrator shall mean [____], a [____] corporation, together with its partners, members, joint venturers, employees, agents, officers, directors, shareholders, representatives, consultants, successors and assigns.

Integrator-Related Entities shall mean (i) Integrator, (ii) partners, joint venturers and/or members in or with Integrator, (iii) Subcontractors (including Suppliers), (iv) any other Persons performing any of the Work, (v) any other Persons for whom Integrator may be legally or contractually responsible, and (vi) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Invention shall have the meaning assigned such term in Section 21.9.1.

Key Personnel shall mean those individuals and Integrator personnel identified in Section 2.1.2.3 of the Technical Provisions.

Law or **Laws** shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to any portion of the Project, any Final ROW, and/or the Work, whether now or hereafter in effect, including Environmental Laws.

Letter of Credit Bank shall have the meaning assigned such term in Section 8.2.3.

Lien shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title

retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages shall mean the amount that Integrator is required to pay to TxDOT pursuant to Section 17.1 and 17.2 of this Agreement. The Liquidated Damages shall be determined for each Project Segment with reference to the methodology for determination described in Exhibit Y.

Losses shall mean any loss, damage (including personal injury, property damage and natural resource damages), injury, liability, cost, expense (including attorneys' fees and expenses (including those incurred in connection with the enforcement of any provision of this Agreement)), fee, charge, demand, investigation, proceeding, action, suit, claim, judgment, penalty, fine or Third Party Claims.

Maintenance Base Month shall mean, for each Project Segment, the month in which Final Acceptance occurs or the month in which TxDOT turns over an existing system to Integrator for maintenance, as applicable.

Maintenance Payment Bond shall have the meaning set forth in Section 8.1.4 of this Agreement.

Maintenance Performance Bond shall have the meaning set forth in Section 8.1.4 of this Agreement.

Maintenance Plan shall have the meaning assigned such term in Section 10.4.2.1 and as further described in Section 4.5.1 of the Technical Provisions.

Maintenance Price shall mean the compensation to be paid by TxDOT to Integrator for performance of the Maintenance Work with respect to any Project Segment(s).

Maintenance Price Draw Request shall mean a Maintenance Price Draw Request and Certificate in the form of Exhibit S to this Agreement.

Maintenance Records shall mean the maintenance records that Integrator is required to maintain pursuant to Section 4.5.7 of the Technical Provisions.

Maintenance Report shall have the meaning set forth in Section 4.5.8 of the Technical Provisions.

Maintenance Term shall have the meaning set forth in Recital G of this Agreement.

Maintenance Unit Prices shall mean those maintenance unit prices for Project Segments, as submitted with the Proposal and set forth on Exhibit U-2.

Maintenance Work shall mean that portion of the Work that Integrator is required to perform with respect to a Project Segment from and after System Acceptance, except for the Punch List Work.

Major Subcontracts shall mean (a) a Subcontract in excess of ten percent (10%) of the applicable Project Segment Price for Work prior to Final Acceptance, and (b) a Subcontract in excess of ten percent (10%) of the Project Segment Maintenance Price for Maintenance Work.

Master Clock shall have the meaning set forth in Section 4.1.6 of the Technical Provisions.

Milestone shall mean the certain or significant accomplishments towards completion of the Work set forth in the Milestone Payment Structure.

Milestone Payment shall mean the percentage of the Project Segment Price that TxDOT pays to Integrator upon the achievement of the Milestones.

Milestone Payment Structure shall mean the payment structure set forth in Exhibit F, establishing percentage payments for the Project Segment Prices that TxDOT shall make to Integrator upon achievement of the Milestones set forth therein.

Minimum Letter of Credit Amount shall have the meaning set forth in Section 8.2.1 of this Agreement.

Monthly Progress Reports shall have the meaning set forth in Section 7.3.2 of the Technical Provisions.

Necessary Basic Configuration Change shall mean a change in the Basic Configuration which is necessary to meet the requirements of the Contract Documents as the result of an Error in the Owner Design Documents (with the understanding that a change shall be deemed "necessary" only if the Error creates a problem in which Integrator is unable to meet the requirements of the Contract Documents without a material change in the Basic Configuration).

Network Communications shall have the meaning set forth in Section 2.7.4.2 of the Technical Provisions.

New Environmental Approval shall mean (a) any Environmental Approval required for a Project Segment, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval.

Nonconforming Work shall mean Work that Integrator, any Governmental Entity or TxDOT determines does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law or the Design Documents.

Notice of Partial Termination for Convenience shall mean written notice issued by TxDOT to Integrator terminating part of the Work of Integrator for convenience.

Notice of Termination for Convenience shall mean written notice issued by TxDOT to Integrator terminating the Work of Integrator for convenience.

Notice to Proceed (NTP) shall mean the written notice issued by TxDOT to Integrator authorizing Integrator to proceed with Work.

Operational Testing Procedures shall have the meaning set forth in Section 4.4.1 of the Technical Provisions.

Operation Test Report shall have the meaning set forth in Section 4.4.10 of the Technical Provisions.

Other TxDOT Integrator shall mean an Integrator under contract to TxDOT to design, build, finance, operate and/or maintain a toll road.

Owner Design Documents shall mean some or all of the Schematic Design, and any as-built drawings, plan sheets, drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records or similar documents furnished by TxDOT to Integrator as a preliminary basis for Integrator's design.

Owner Verification Tests (OVT) shall mean the material tests performed in accordance with the applicable TxDOT test method to verify the accuracy of the tests performed by Integrator's QC to ensure that only materials of specified quality or better are accepted and incorporated into the Project.

Party shall mean Integrator or TxDOT, as the context may require, and "**Parties**" shall mean Integrator and TxDOT, collectively.

Payment Bond shall have the meaning set forth in Section 8.1.2 of this Agreement.

PCO Notice shall have the meaning set forth in Section 13.3.2.3 of this Agreement.

Performance Audit shall have the meaning set forth in Section 4.4.11 of the Technical Provisions.

Performance Audit Procedures shall have the meaning set forth in Section 4.4.12 of the Technical Provisions.

Performance Audit Report shall have the meaning set forth in Section 4.4.13 of the Technical Provisions.

Performance Bond shall have the meaning set forth in Section 8.1.1.

Performance Requirements shall mean the performance requirements described in Sections 2.1.1 and 4.2 of the Technical Provisions.

Persistent Breach shall mean if a Tolling Zone in a Project Segment fails to meet or exceed the System Functional Availability performance levels defined in Table 1 of the Technical Provisions or the System Performance Requirements defined in Table 5 of the Technical Provisions each day for more than 5 consecutive Days, with compliance measured on a daily basis, or each day for more than 10 (consecutive or non-consecutive) Days in any calendar quarter (3 month period), with compliance measured on a daily basis.

Person shall mean any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Plans shall mean contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Work to be done.

Preliminary Design Documentation shall have the meaning set forth in Section 4.1.7.5 of the Technical Provisions.

Preliminary Design Review (PDR) shall mean review of the Preliminary Design Documentation as provided in Section 4.1.7.5 of the Technical Provisions.

Price Proposal shall mean Form K (including all subparts) as submitted with the Proposal.

Price shall mean, as applicable, a Project Segment Price or a Project Segment Maintenance Price.

Program Manager shall mean the individual designated by Integrator and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Integrator, pursuant to Section 2.3.2 of this Agreement.

Project shall have the meaning set forth in Recital A to this Agreement.

Project Delivery Unit Prices shall mean those project delivery unit prices for Project Segments, as submitted with the Proposal and set forth on Exhibit U-1.

Project Host Server (PHS) shall have the meaning set forth in Section 4.2.10 of the Technical Provisions.

Project Management Consultant shall mean Jacobs or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Project Management Consultant.

Project Management Plan shall have the meaning set forth in Section 1.2.1 of the Technical Provisions.

Project Organization Chart shall mean a graphic representation of the hierarchy and functional areas of responsibility for the Key Personnel.

Project Schedule shall have the meaning set forth in Section 7 of the Technical Provisions.

Project Segment shall have the meaning set forth in Recital A of this Agreement.

Project Segment Acceptance shall mean, with respect to a Project Segment, the achievement of System Acceptance of such Project Segment.

Project Segment Acceptance Test Procedures has the meaning set forth in Section 4.4.6 of the Technical Provisions.

Project Segment Acceptance Test Report has the meaning set forth in Section 4.4.7 of the Technical Provisions.

Project Segment Completion Deadline(s) shall mean, with respect to a Project Segment, the Project Segment System Acceptance Deadline, the Project Segment Punch List Acceptance Deadline and/or the Project Segment Final Acceptance Deadline.

Project Segment Designation Extension shall have the meaning set forth in Recital F of this Agreement.

Project Segment Designation Period shall mean the period of time commencing on the date of the Initial NTP, and terminating at 12:00 a.m., C.S.T. on the third anniversary of the date of the Initial NTP, as may be extended by a Project Segment Designation Extension.

Project Segment Final Acceptance shall mean, with respect to a Project Segment, the achievement of Final Acceptance with respect to such Project Segment.

Project Segment Final Acceptance Deadline shall mean the Final Acceptance Deadline for a Project Segment.

Project Segment Maintenance Price shall have the meaning set forth in Recital G of this Agreement, as adjusted in accordance with Section 12.1.4 of this Agreement,

and as such price may be modified from time to time in accordance with the express provisions of this Agreement.

Project Segment NTP shall mean, with respect to a Project Segment, the Notice to Proceed with the Project Segment Work issued by TxDOT.

Project Segment Price shall have the meaning set forth in Recital D of this Agreement.

Project Segment Punch List Acceptance shall mean, with respect to a Project Segment, the achievement of Punch List Acceptance for such Project Segment.

Project Segment Punch List Acceptance Deadline shall mean, with respect to a Project Segment, the Punch List Acceptance Deadline for such Project Segment.

Project Segment System Acceptance Deadline shall mean, with respect to a Project Segment, the System Acceptance Deadline for such Project Segment.

Project Segment Schedule shall mean, with respect to a Project Schedule, the agreed-upon Project Schedule for such Project Segment.

Project Segment Substantial Acceptance shall mean, with respect to a Project Segment, the achievement of Substantial Acceptance of such Project Segment.

Project Segment Supplement shall mean a supplement to this Agreement, issued by TxDOT and executed by both Parties, setting forth the Project Segment description, Project Segment Price, Project Segment Maintenance Price, Project Schedule Completion Deadlines, Liquidated Damages, Stipulated Damages and any Project Segment-specific modifications to the Contract Document requirements for a particular Project Segment.

Project Segment System Acceptance shall mean, with respect to a Project Segment, the achievement of System Acceptance for such Project Segment.

Project Segment System Acceptance Deadline shall mean, with respect to a Project Segment, the System Acceptance Deadline for such Project Segment.

Project Site shall, depending upon the context, mean the TxDOT ROW on which Project Segment is to be located, or the TxDOT ROW on which the entire Project is to be located, and any temporary rights or interests that Integrator may acquire at its own cost and expense in connection with such Project Segment or the Project as a whole.

Proposal shall mean the proposal submitted on _____, _____ [NTD: Insert Proposal submittal date.] by Integrator to TxDOT in response to the RFP.

Proposal Date shall mean _____, _____.

Proposal Project Segment Prices shall mean, collectively, the Project Delivery Unit Prices, the Maintenance Unit Prices, the Hypothetical Project Delivery Price and the Hypothetical Maintenance Price.

Proposer shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on December 3, 2004, as amended.

Public Information Act shall mean the Texas Government Code Chapter 552.001 *et seq.*, as amended from time to time.

Punch List shall mean, with respect to each Project Segment, the list of Work which remains to be completed after System Acceptance has been achieved and before Punch List Acceptance, and shall be limited to items of the Work that are necessary to correct minor imperfections and deviations from the requirements of the Contract Documents, Governmental Approvals, applicable Law and Design Documents, but which have no material or adverse effect on the use, safety or operability of the applicable Project Segment.

Punch List Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions with respect to a Project Segment set forth in Section 20.2.1 of this Agreement.

Punch List Acceptance Deadline shall have the meaning set forth in Section 4.2.2 of this Agreement.

Recovery Schedule shall mean the schedule Integrator is required to provide under Section 4.5 of this Agreement.

Reference Documents shall mean those documents listed in Exhibit N to this Agreement. Except as expressly provided in the Contract Documents, the Reference Documents are not considered Contract Documents and were provided to Integrator for informational purposes only and without representation or warranty by TxDOT.

Referenced Standard shall mean any standard applicable to the Project established by reference contained in the Contract Documents to a described publication.

Registered Professional Engineer shall mean a person who is duly licensed and registered by the Texas Board of Professional Engineers to engage in the practice of engineering in the State.

Registered Professional Land Surveyor shall mean a person registered by the Texas Board of Professional Land Surveying to practice the profession of land, boundary, or property surveying or other similar professional practices.

Reimbursable Hazardous Materials Costs shall mean Integrator's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.9.3.1 of this Agreement, provided that the 25% mark-ups allowed under Section 13.7.1(a) shall be reduced to 12.5%.

Release of Hazardous Materials shall mean any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Request for Change Proposal shall mean a written notice issued by TxDOT to Integrator under Section 13.2.1 of this Agreement, advising Integrator that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 13.2.1 of this Agreement.

Request for Information shall mean a written request prepared by Integrator after Design Documents have been Released for Construction to initiate the process for potential design changes or clarifications.

Request for Partnering shall have the meaning set forth in Section 13.3.2.2 of this Agreement.

Request for Proposals or **RFP** shall mean the Request for Proposals issued by TxDOT on [_____, 2011] with respect to the Project, including all attachments thereto and any subsequent addenda.

Retainage shall have the meaning set forth in Section 12.3.1 of this Agreement.

Revised Project Schedule shall mean TxDOT approved modifications to the Baseline Schedule.

RFP Documents shall mean all of the information and materials supplied to Integrator in connection with the issuance of the RFP, including Instructions to Proposers, the Contract Documents and the Reference Documents and any addenda issued in connection therewith.

ROW Strip Map shall mean the diagrams depicting the Schematic ROW applicable to a Project Segment.

Rules shall have the meaning set forth in Recital B of this Agreement.

Safety and Health Plan shall have the meaning set forth in Section 8.6 of the Technical Provisions.

Schematic Design shall mean the roadway schematic plans applicable to a Project Segment.

Schematic ROW shall mean any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines established by TxDOT on a ROW Strip Map to delineate the outside limits of the Ultimate Design, as such limits may be adjusted from time to time in accordance with the Contract Documents. The term specifically includes all air space, surface rights, and subsurface rights within the limits of the ROW.

Software is a general term referring to computer software consisting of the instructions or programs that are executed by a computer.

Software Development Plan shall have the meaning provided in Section 4.1.7.2 of the Technical Provisions.

Software Source Code shall have the meaning set forth in Section 21.8.4(b) of this Agreement.

Source Code Escrow shall have the meaning set forth in Section 21.8.4(a) of this Agreement.

State shall mean the State of Texas.

Stipulated Damages shall mean the amount that Integrator is required to pay to TxDOT pursuant to Sections 17.4.1 and 17.4.2 of this Agreement. The Stipulated Damages shall be determined for each Project Segment with reference to the methodology for determination described in Section 17.4.2 of this Agreement..

Subcontract shall mean any agreement by Integrator with any other Person, Subcontractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

Subcontractor shall mean any Person with whom Integrator has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of Integrator and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at all tiers.

Supplier shall mean any Person not performing work at or on a Project Site which supplies machinery, equipment, materials, Hardware, Software, systems or any other appurtenance to any portion of the Project to Integrator or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from a Project Site shall not be deemed to be performing Work at a Project Site.

Surety shall mean each properly licensed surety company, insurance company or other Person approved by TxDOT, which has issued any Payment Bond or Performance Bond.

System shall have the meaning set forth in Recital A of this Agreement.

System Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions with respect to a Project Segment set forth in Section 20.1 of this Agreement.

System Acceptance Deadline shall have the meaning set forth in Section 4.2.1 of this Agreement.

System Assurance Monitoring shall have the meaning set forth in Section 10.4.3.

Technical Provisions shall mean the document describing the scope of the Work.

Test Plan has the meaning assigned in Section 4.4.1 of the Technical Provisions.

Third Party Claims shall mean any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 13.7 of this Agreement.

Toll System Design Documents shall mean all Design Documents relating to or required in connection with the Toll Systems Services.

Toll Systems Services shall mean all Work necessary for System Design, Software Development and System Installation and Testing, as provided in Section 2.2 of the Technical Provisions.

Toll Systems Services Quality Control Manager (TSSQCM) shall have the meaning set forth in Section 2.2.3.1 of the Technical Provisions.

Toll Systems Services Quality Program (TSSQP) shall have the meaning set forth in Section 1.2.2 of the Technical Provisions.

Toll Systems Services Quality Review Manager (TSSQRM) shall mean the manager responsible for the overall management of the TSSQP as more particularly described in Section 2.2.3.3 of the Technical Provisions.

Toll Systems Services Subcontractor shall mean a Subcontractor whose Work consists, in whole or in part, of Toll Systems Services.

Toll Zone or Tolling Zone shall mean a tolling point for one direction of traffic at a single geographic location.

Tolling System shall mean the integrated collection of Toll Zones and other Integrator-provided equipment supporting tolling for a particular Segment.

TxDOT shall mean the Texas Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of TxDOT invoked by or under the Contract Documents.

TxDOT-Caused Delays shall mean unavoidable delays arising from the following matters and no others, but only to the extent that they (i) materially adversely affect a Critical Path, (ii) are not mitigated by or susceptible to handling by a work around or consumption of Float, and (iii) are not due to an act, omission, negligence, recklessness, willful misconduct, breach of contract or violation of Law of or by any of the Integrator-Related Entities:

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other submittals and matters for which response is required, within the time periods (if any) indicated in the Contract Documents, or other failure of TxDOT to act within a reasonable time period with respect to actions which it is required to take under this Agreement, including failure to provide Integrator with access to the Site in accordance with the approved Project Schedule, following delivery of written notice from Integrator reasonably requesting such action in accordance with the terms and requirements of this Agreement;
- (c) uncovering, removing and restoring Work pursuant to Section 5.4.3 of this Agreement and Section 2.2.5 of the Technical Provisions, if such Work exposed or examined is in conformance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT, as required in Section 2.2.5 of the Technical Provisions; and

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (j) of the definition of “**Force Majeure Event**”) despite the fact that TxDOT may specifically direct Integrator to suspend the Work. TxDOT-Caused Delays shall apply only on an individual Project Segment basis. The occurrence of a TxDOT-Caused Delay as to a Project Segment shall not apply to other Project Segments and aspects of the Project unless the same event has occurred as to such other Project Segments or aspects.

TxDOT-Directed Changes shall mean any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work) that increase Integrator's costs by more than \$5,000 (or more than \$25,000 in the aggregate in any one calendar year), which TxDOT has directed Integrator to perform as described in Section 13.1 of this Agreement.

TxDOT-Provided Approvals shall mean, with respect to each Project Segment, the following:

- (a) the ROD or FONSI, as appropriate;
- (b) nationwide permit for the placement of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. §1344) and certification that the actions permitted under the Section 404 permit are in compliance with State water quality requirements and other applicable State laws under Section 401 Water Quality Certification (33 U.S.C. §1341)(1986);
- (c) approvals under the National Historic Preservation Act (16 U.S.C. §470(f)) and implementing regulations (36 C.F.R §§800, et seq.) to the extent TxDOT has agreed to be responsible therefor; and
- (d) the SEP-15 Approval.

TxDOT Standards shall mean the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, adopted by the Texas Department of Transportation on June 1, 2004.

TxDOT Toll Collection System shall have the meaning set forth in Section 1.1.1 of the Technical Provisions.

Unidentified Utility shall mean any Utility impacted by the Project which is not in one of the categories:

- (a) The Utility line is shown on a Utility Strip Map (irrespective of whether correct ownership is shown) or other Utility information provided by TxDOT or made available to Integrator.
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on a Utility Strip Map or other Utility information provided by TxDOT or made available to Integrator (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).
- (c) the Utility is an overhead Utility existing as of the date on which the NTP for such Project Segment is issued or which commenced installation prior to the date on which the NTP for such Project Segment is issued or.

- (d) The Utility is an extension of an Identified Utility (including a service line extending from a Utility that is not an Unidentified Utility).
- (e) The Utility is located in the same trench as a Utility that is not an Unidentified Utility (e.g. communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on a Utility Strip Map or other Utility information provided by TxDOT or made available to Integrator that is a component or extension of a Utility that is not an Unidentified Utility is considered a part of the Utility.

If a Utility falls within any of the categories listed above, then it is not an Unidentified Utility regardless of any discrepancy between (i) the information provided on a Utility Strip Map or other Utility information provided by TxDOT or made available to Integrator, and (ii) the actual characteristics of that Utility with respect to its size, its horizontal or vertical location, its ownership, its type (e.g., gas, water, communication, electric), or any other characteristic. Without limiting the generality of the foregoing, if a Utility is shown on a Utility Strip Map or other Utility information provided by TxDOT or made available to Integrator as being on public right of way, and it is in fact located on private right of way, or vice versa, that discrepancy is of no relevance in determining whether or not that Utility is an Unidentified Utility.

Utility(ies) or **utility(ies)** shall mean (1) a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public, and/or (2) a private pipeline. The term “Utility” or “utility” specifically excludes (a) storm water facilities providing drainage for the Final ROW, and (b) street lights and traffic signals. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any service line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service line.

Utility Appurtenance Adjustment shall mean the adjustment of Utility appurtenances (e.g. manholes, valve boxes, and vaults) for line and grade upon completion of the Work.

Utility Strip Maps shall mean any maps depicting existing Utilities identified by TxDOT applicable to a Project Segment.

Warranty shall have the meaning set forth in Section 11.1.1 of this Agreement.

Warranty Bond shall have the meaning set forth in Section 8.1.3 of this Agreement.

Work shall mean all of the work required to be furnished and provided by Integrator under the Contract Documents, including all administrative, design, support services, procurement, professional, manufacturing, supply, installation, integration, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Integrator as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance for each Project Segment and to maintain the System in accordance with the standards set forth in the Contract Documents, except for those efforts which such Contract Documents expressly specify will be performed by Persons other than the Integrator-Related Entities.

Work Breakdown Structure (WBS) shall mean the organization of Project activities and elements as more particularly described in Section 7.2.2 of the Technical Provisions.

[END OF DEFINITIONS]

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EXHIBIT B

[Intentionally Omitted]

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EXHIBIT C
INTEGRATOR'S PROPOSAL COMMITMENTS AND CLARIFICATIONS

The following pages summarize certain commitments made by Integrator in its Proposal submitted for the Project, which Integrator agrees either meet or exceed the requirements of the other Contract Documents. The commitments set forth herein are included in the scope of the Work. This summary is an overview of certain Integrator commitments and is not intended to be an exhaustive list of commitments made in the Proposal that meet or exceed the requirements of the other Contract Documents. In accordance with Section [] [NTD: Insert relevant section from Integrator's Proposal.], the Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents, shall be included as a Contract Document, even if a particular Integrator commitment is not summarized herein. Nothing contained herein shall limit, modify, eliminate or reduce the requirements of the other Contract Documents listed in Section [].

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Proposal Commitments & Clarifications

[to be provided in execution version from Proposal]

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EXHIBIT D
FEDERAL REQUIREMENTS

<u>Exhibit Description</u>	<u>No. of Pages</u>
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	27
Attachment 3 – Federal Prevailing Wage Rate	6
Attachment 4 – Equal Employment Opportunity	7
Attachment 5 – Affirmative Action	5
Attachment 6 – On the Job Training Program	—
Attachment 7 – Compliance with Buy America Requirements	2

ATTACHMENT 1 TO EXHIBIT D

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 D. Whenever in said required contract provisions references are made to "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean the TxDOT or its authorized representative.

PERFORMANCE OF PREVIOUS CONTRACT.—In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, the Integrator 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 VII 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.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated within other sections of the Agreement and the TxDOT Design-Build DBE Program (Exhibit G to the Agreement).

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 facility 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 facility for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

BUY AMERICA REQUIREMENTS FHWA Federal-aid projects are subject to 23 CFR § 635.410, Buy America requirements. The provisions of 23 CFR § 635.410 are incorporated herein by reference and shall apply to this Agreement.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Integrator and its Contractors 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 Integrator and Contractors 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), Integrator and its Contractors 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. Integrator agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

ATTACHMENT 2 TO EXHIBIT D
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS
FHWA Form 1273

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I GENERAL

1. 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.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
 - Section I, paragraph 2;
 - Section IV, paragraphs 1, 2, 3, 4, and 7;
 - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

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 and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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 State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his 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, preapprenticeship, and/or on-the-job training."

- 2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO 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 minority group employees.
 - 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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the

system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group 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 his 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 his avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- 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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- 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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best 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 SHA 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 minority and women 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 minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.

8. 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.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Integrators shall obtain lists of DBE construction firms from SHA personnel.
- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. 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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

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

- i. The number of minority and non-minority group members and women employed in each work classification on the project;
 - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA 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. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
2. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for

employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

3. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

- a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.

- b. 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.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - ii. the additional classification is utilized in the area by the construction industry;
 - iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration,

Washington, D.C. 20210. The Wage and Hour 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.

- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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. Said 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
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

- i. 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- ii. The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- iii. 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 journeyman-level 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 for the Wage

and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. 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 DOL, Employment and Training Administration.
- ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.
- iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which

case such trainees shall receive the same fringe benefits as apprentices.

iv In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. Helpers:

d. Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. 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.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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 SHA contracting officer 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.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local

roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3)

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Integrators or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted

shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/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 maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - ii. that such 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 the Regulations, 29 CFR 3;
 - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. 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 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Integrator of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
 - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).

- a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.
- 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 on the contract as a whole and in general are to be limited to minor components of the overall contract.
- c. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
- d. 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 SHA contracting officer determines is necessary to assure the performance of the contract.
- e. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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 SHA 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. 333).
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. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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, the following notice 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:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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 not more than \$10,000 or imprisoned not more than 5 years or both."*

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

1. Instructions for Certification - Primary Covered Transactions

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary 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 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 primary 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 department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary 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," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary 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 primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. 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.
- 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.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-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;
 - c. 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 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

3. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- 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," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- 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.
- 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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- 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.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

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 participation in this transaction 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.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(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 of Lobbying Activities," 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 his or her bid or proposal that he or she 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.

DRAFT

ATTACHMENT 3 TO EXHIBIT D

FEDERAL PREVAILING WAGE RATE

The federal prevailing wage rates for each Project Segment will be set forth in each respective Project Segment Supplement. Federal prevailing wage rates for Texas are available by county online at: <http://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>.

DRAFT

ATTACHMENT 4 TO EXHIBIT D
EQUAL EMPLOYMENT OPPORTUNITY

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

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 D

AFFIRMATIVE ACTION

SPECIAL PROVISION 000---004

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

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.
2. **Goals.**
 - a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
 - b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

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

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

for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d.** A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
- 3. Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- 4. Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
- 5. Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1

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

Goals for Minority		Goals for Minority	
County	Participation	County	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

Goals for Minority		Goals for Minority	
County	Participation	County	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 D
ON-THE-JOB TRAINING

SPECIAL PROVISION
000--1676

On-the-Job Training Program

1. Description. The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
2. Trainee Assignment. Training assignments are determined based on the past contract volume of federal-aid work performed with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.
3. Program Requirements. Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter and 90% for the last quarter, respectively. Contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department.
4. Compliance. The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

(2004 Specifications)

ATTACHMENT 7 TO EXHIBIT D

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

Integrator shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this Agreement only if domestic steel and iron will be used on the Facility. 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 Contract with the Lead Contractor.

Concurrently with execution of the Agreement, Integrator has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, Integrator is bound by its original certification. However, in accordance with 49 USC 5323(j)(7), Integrator may have the opportunity to correct an inadvertent error in its certification. Integrator may correct any certification of noncompliance or failure to properly complete this certification if Integrator attests under penalty of perjury that it submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing such inadvertent or clerical error is on Integrator. Integrator's failure to sign the certification is not considered an inadvertent or clerical error.

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

BUY AMERICA CERTIFICATE

Certificate of Compliance

Integrator hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2), and the applicable regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Integrator's Name: _____

Title: _____

Or

Certificate for Noncompliance

Integrator hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2), but may qualify for a waiver to the requirement to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Integrator's Name: _____

Title: _____

EXHIBIT E

TxDOT-PROVIDED APPROVALS

With respect to each Project Segment:

- A record of decision (ROD) or finding of no significant impact, except to the extent of Integrator's responsibility for New Environmental Approvals
- Any required USACE Nationwide Permit under Section 404 of the Clean Water Act and Section 401 certification, except to the extent of Integrator's responsibility for New Environmental Approvals
- Any required archeological clearances under Section 106 of NHPA for any Schematic ROW, except to the extent of Integrator's responsibility for New Environmental Approvals

EXHIBIT F

MILESTONE PAYMENT STRUCTURE

The following payment structure shall be used for Work including a single Notice To Proceed:

Table 1 – Single NTP Milestone Payment Structure

Payment #	Description	Payment % [†]	Milestone
1	Mobilization	*	After NTP
2	Mobilization Equipment Purchase	* 25%	Upon purchase of equipment or 3 months after NTP 1
3	Project Documentation	20%	TxDOT Approval of Preliminary Design Document
4	Mobilization System Acceptance	* 20%	Certificate Issued by TxDOT
5	Operational Test Complete	15%	TxDOT Approval of Test Report
6	Project Documentation [‡]	10%	TxDOT Approval of Documentation
7	Final Acceptance	10%	Certificate Issued by TxDOT

- * Mobilization (up to 5% of the capital price) shall be paid over the first three payments as follows:
- The first payment is in the amount equal to 25% of the line item price for mobilization (up to 1.25% of the capital price);
 - The second payment is in the amount equal to 50% of the line item price for mobilization (up to 2.5% of the capital price); and
 - The third payment is in the amount equal to 25% of the line item price for mobilization (up to 1.25% of the capital price).

[†] Beginning with Payment #2, the line items in the capital price other than Mobilization will be included at the percentages shown for each payment.

[‡] Project Documentation shall include all documents listed in Section 2.1.5.4 and Section 2.2.2 of the Volume 2 – Technical Provisions.

The following payment structure shall be used for Work including a two Notices To Proceed:

Table 2 - Dual NTP Milestone Payment Structure

<u>Payment #</u>	<u>Description</u>	<u>Payment %*</u>	<u>Milestone</u>
NTP1			
1	Mobilization	**	Monthly after NTP 1
2	Equipment Purchase	25%	Upon purchase of equipment
3	NTP-1 Project Documentation	20%	TxDOT Approval of NTP-1 Documentation
NTP2			
4	System Acceptance	20%	Certificate Issued by TxDOT
5	Operational Test Complete	15%	TxDOT Approval of Test Report
6	NTP-2 Project Documentation [†]	10%	TxDOT Approval of NTP-2 Documentation
7	Final Acceptance	10%	Certificate Issued by TxDOT

* Payment percentages, other than Payment #1 for mobilization, shall be distributed across all line items shown in the capital price in the executed PSS other than the mobilization line item for each Draw Request beginning with Payment #2.

** Mobilization (5% of the capital price) shall be paid over the first three Draw Requests in addition to the other milestone amounts shown above such that:

- The first payment is in the amount equal to 25% of the line item price for mobilization (1.25% of the capital price);
- The second payment is in the amount equal to 50% of the line item price for mobilization (2.5% of the capital price); and
- The third payment is in the amount equal to 25% of the line item price for mobilization (1.25% of the capital price).

† Project Documentation (NTP-1 and NTP-2) shall include all documents as defined within the Project Segment Supplement.

EXHIBIT G

**SPECIAL PROVISION FOR
THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

[NTD: To be provided.]

DRAFT

EXHIBIT H

FORM OF PERFORMANCE BOND

**TXDOT STATEWIDE TOLL SYSTEM
INTEGRATION AND MAINTENANCE AGREEMENT**

Bond No. _____

WHEREAS, the Texas Department of Transportation (“**Obligee**”), has awarded to _____, a _____ (“**Principal**”), a Statewide Open – Road Toll Collection System Contract, duly executed and delivered as of _____, 2012 (the “**Contract**”), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract).

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 \$_____ [**100% of the applicable Project Segment 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 OBLIGATION 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 this obligation shall be null and void; otherwise it 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 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 under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for liquidated damages and warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the final completion of the design, construction and installation called for in the Contract Documents with respect to those obligations of Principal which survive such final completion.

4. Whenever Principal shall be, and is declared by Obligees to be, in default under the Contract Documents, provided that Obligees 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 Obligees for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees'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 Obligees the amount of damages as described in Paragraph 6 in excess of the unpaid balance of the applicable Project Segment Price incurred by the Obligees 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 Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 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 Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d, and the Obligees refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.

6. After the Obligees 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 Obligees shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the applicable Project Segment 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 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; and

c. Liquidated Damages, Stipulated Damages and warranties 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 (as defined in the Contract), without the Surety's prior written consent thereto having been obtained, does not increase the Project Segment Price by more than \$_____ [**insert 10% of the Project Segment Price**]. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Agreement) for TxDOT-Directed Changes in excess of such amount. Surety waives notice of any alteration, modification, supplement or extension of time.

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 _____, 20__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

_____ or secretary attest

By: _____
Name
Title:
Address:

[To be replaced at award by actual bond]

EXHIBIT H-1

FORM OF RIDER TO PERFORMANCE BOND

**TXDOT STATEWIDE TOLL SYSTEM
INTEGRATION AND MAINTENANCE AGREEMENT**

Bond No. _____

THIS RIDER TO PERFORMANCE BOND is issued with reference to the TxDOT Statewide Toll System Integration and Maintenance Agreement between the Texas Department of Transportation ("**Obligee**"), and _____, a _____ ("**Principal**"), duly executed and delivered as of _____, 20____ (the "**Agreement**").

Pursuant to the Contract, Principal and _____ ("**Surety**") duly executed and delivered to Obligee Performance Bond No. _____, dated _____, 20____, in the amount of the "Bonded Sum" described therein (the "**Bond**"). Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

Also pursuant to the Contract, Obligee and Principal have entered into a Project Segment Supplement, as contemplated by the Contract, dated as of _____, pursuant to which Principal has assumed under the Contract the additional obligations set forth in such Project Segment Supplement.

Prior to the issuance of NTP for the Work set forth in the Project Segment Supplement, Principal is required to furnish a Rider increasing the Bonded Sum by the Project Segment Price set forth in the Project Segment Supplement.

NOW, THEREFORE, Principal and Surety hereby agree that the Bonded Sum stated in the Bond is increased to the amount of \$_____, for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

Except for the increase in the amount of the Bonded Sum as provided herein, all terms and conditions of the Bond remain in full force and effect as originally therein set forth.

IN WITNESS WHEREOF, Principal and Surety have caused this RIDER TO PERFORMANCE BOND to be executed and delivered as of _____, 20____.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

DRAFT

EXHIBIT H-2

FORM OF MAINTENANCE PERFORMANCE BOND

**TXDOT STATEWIDE TOLL SYSTEM
INTEGRATION AND MAINTENANCE AGREEMENT**

Bond No. _____

WHEREAS, the Texas Department of Transportation (“**Obligee**”), has awarded to _____, a _____ (“**Principal**”), a Statewide Open – Road Toll Collection System Contract, duly executed and delivered as of _____, 2012 (the “**Contract**”), on the terms and conditions set forth therein; and

WHEREAS, as a condition of Final Acceptance pursuant to the Contract, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) during the Maintenance Term.

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 100% of the applicable 2 year aggregate Project Segment Maintenance 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 OBLIGATION 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 this obligation shall be null and void; otherwise it shall remain in full force and effect. Obligee shall release this bond upon the occurrence of all of the conditions set forth in Section 8.1.4 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 under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Stipulated Damages and warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal which survive such final completion.

4. Whenever Principal shall be, and is declared by Obligees to be, in default under the Contract Documents, provided that Obligees 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 Obligees for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees'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 Obligees the amount of damages as described in Paragraph 6 in excess of the unpaid balance of the applicable Project Segment Maintenance Price incurred by the Obligees 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 Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 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 Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d, and the Obligees refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.

6. After the Obligees 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 Obligees shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the applicable Project

Segment Maintenance 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 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; and
- c. Stipulated Damages and warranties 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 (as defined in the Contract), without the Surety's prior written consent thereto having been obtained, does not increase the Project Segment Maintenance Price by more than \$_____ **[insert 10% of the aggregate 2 year Project Segment Maintenance Price, as applicable]**. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Agreement) 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 _____, 20____.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

or secretary attest

SURETY
By: _____
Name
Title:
Address:

DRAFT

EXHIBIT I

FORM OF PAYMENT BOND

TXDOT STATEWIDE TOLL SYSTEM
INTEGRATION AND MAINTENANCE AGREEMENT

Bond No. _____

WHEREAS, the Texas Department of Transportation (“**Obligee**”), has awarded to _____, a _____ (“**Principal**”), a Statewide Toll System Integration and Maintenance Agreement, duly executed and delivered as of _____, 2012 (the “**Agreement**”), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond guaranteeing payment of claims, subcontractors, suppliers, materialmen and mechanics.

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 \$_____ [**100% of the applicable Project Segment 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 OBLIGATION IS SUCH THAT, if Principal shall fail to pay any claims, subcontractors, suppliers, materialmen and mechanics with respect to the Work (as defined in the Contract), then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.2 of the Contract.

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

1. The Contract Documents (as defined in the Contract) 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 (as defined in the Contract) without the Surety’s prior written consent thereto having been obtained, does not increase the Project System Price (as defined in the Contract) by more than \$_____ [**insert 10% of Project Segment Price**]. Surety waives notice of any alteration, modification, supplement or extension of time other than

Change Orders (as defined in the Contract) 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 the persons identified above 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 _____, 20____.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

[To be replaced at award by actual bond]

EXHIBIT I – 1

FORM OF RIDER TO PAYMENT BOND

**TXDOT STATEWIDE TOLL SYSTEM
INTEGRATION AND MAINTENANCE AGREEMENT**

Bond No. _____

THIS RIDER TO PAYMENT BOND is issued with reference to the TxDOT Statewide Toll System Integration and Maintenance Agreement between the Texas Department of Transportation (“**Obligee**”), and _____, a _____ (“**Principal**”), duly executed and delivered as of _____, 2012 (the “**Agreement**”).

Pursuant to the Contract, Principal and _____ duly executed and delivered to Obligee Payment Bond No. _____, dated _____, 20____, in the amount of the Bonded Sum described therein (the “**Bond**”). Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

Also pursuant to the Contract, Obligee and Principal have entered into a Project Segment Supplement, as contemplated by the Contract, dated as of _____, pursuant to which Principal has assumed under the Contract the additional obligations set forth in such Project Segment Supplement.

Prior to issuance of the NTP for the Work set forth in the Project Segment Supplement, Principal is required to furnish a Rider increasing the Bonded Sum by the Project Segment Price set forth in the Project Segment Supplement.

NOW, THEREFORE, Principal and Surety hereby agree that the Bonded Sum stated in the Bond is increased to the amount of \$_____, for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

Except for the increase in the amount of the Bonded Sum as provided herein, all terms and conditions of the Bond mean in full force and effect as originally therein set forth.

IN WITNESS WHEREOF, Principal and Surety have caused this RIDER TO PAYMENT BOND to be executed and delivered as of _____, 20____.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

or secretary attest

By: _____
Name
Title:
Address:

DRAFT

EXHIBIT I – 2

FORM OF MAINTENANCE PAYMENT BOND

TxDOT STATEWIDE OPEN ROAD TOLL COLLECTION SYSTEM

Bond No. _____

WHEREAS, the Texas Department of Transportation (“**Obligee**”), has awarded to _____, a _____ (“**Principal**”), a Statewide Toll System Integration and Maintenance Agreement, duly executed and delivered as of _____, 20__ (the “**Agreement**”), on the terms and conditions set forth therein; and

WHEREAS, as a condition of Final Acceptance pursuant to the Contract, Principal is required to furnish a bond guaranteeing payment of claims, subcontractors, suppliers, materialmen and mechanics.

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 \$_____ [**100% of the applicable 2 year aggregate Project Segment Maintenance 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 OBLIGATION IS SUCH THAT, if Principal shall fail to pay any claims, subcontractors, suppliers, materialmen and mechanics with respect to the Work (as defined in the Contract), then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.4 of the Contract.

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

1. The Contract Documents (as defined in the Contract) 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 (as defined in the Contract), without the Surety’s prior written consent thereto having been obtained, does not increase the Project Segment Maintenance Price by more than \$_____ [**insert 10% of the aggregate 2 year Project Segment Maintenance Price**]. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Contract) for TxDOT-

Directed Changes in excess of such amount. 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 the persons identified above 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 _____, 20____.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

EXHIBIT J

FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # _____

Date: _____
month/day/year

Texas Department of Transportation
125 E. 11th Street
Austin, TX 78761

"Entry Required in Cell"

Draw Request for Work performed for the period:

_____ to _____
month/day/year month/day/year

Original Contract Price

Approved Change Order Amounts

Revised Contract Price

Cumulative Price Earned to Date

Cumulative Amount of Previous Draw Requests

Amount Qualified for Payment this Period (Milestones Achieved)

Cumulative Amount of Previous Retainage (5% of Cumulative Amount of Previous Draw Requests)

Retainage Percentage this Draw Request (5% of Amount Qualified for Payment this Period)

Current Amount Due (Amount Qualified for Payment this Period less Retainage Percentage this Draw Request)

	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

Milestones Achieved and Covered Under This Draw Request: (list):

Milestones Achieved and Covered Under Prior Draw Requests (list):

Printed Name Integrator'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 2 of 2 for Draw Request Checklist)

DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- Monthly progress report as described in Section 7 of the Technical Provisions
- Description of the status of all completed Milestones
- Certifications by the Quality Manager;
- Report of personnel hours since the prior Draw Request (including a list setting forth all Key Personnel and the hours which they worked during this period);
- Draw Request data sheet(s) and documents that support and substantiate the amount requested based upon completion of Milestones;
- DBE utilization reports **[NTD: Confirm that this is the correct report];**
- An approved and updated Project Schedule.

NOTE – following for information only

Draw Request, Integrator shall submit a certificate in a form approved by TxDOT and signed and sealed by the Professional Services Quality Review Manager, the Toll Systems Quality Review Manager and Construction Quality Acceptance Manager, certifying that:

- ◆ Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, Suppliers and Fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Quality Manager;
- ◆ Except as specifically noted in the certification, all Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law;
- ◆ The TSSQP and the CQP and all of the measures and procedures provided therein are functioning properly and are being followed; and
- ◆ The Professional Services percentages, the Toll System Services percentages and construction percentages indicated are accurate and correct.

EXHIBIT K
FORM OF CHANGE ORDER

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION I

Originator: _____ **Date:** _____

Title: _____

Contract No: _____

Company Name: _____

DESCRIPTION:

SCOPE:

CAUSE OF CHANGE ORDER REQUEST:

Integrator Project Manager **Date**

[if a Guarantor is required under the Agreement, insert the below]

Acknowledged, approved and consented to by:

Guarantor:

By: _____

Name: _____

Title: _____

DRAFT

CHANGE ORDER REQUEST

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

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:

<u>Activity No.</u>	<u>Description</u>	<u>Amount</u>
_____	_____	_____

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)
- _____ A Change Order that includes some or all of the above elements (provide information in Section IIA, IIB, IIC as applicable)

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 Proposal by Categories: [Additives/(Credits)]

A.	Integrator Labor (civil construction)	
1.	Wages ¹	\$ _____
2.	Labor benefits ² (Lesser of (i) actual cost of labor benefits or (ii) 55% of A.1)	\$ _____
B.	Integrator and Subcontractor Labor (professional services)	
1.	Wages (Raw)	\$ _____
2.	Labor benefits ¹ (25% of B.1, which includes overhead and profit)	\$ _____
3.	Off-duty peace officers and patrol cruisers ¹	\$ _____
C.	Integrator and Subcontractor Labor (toll systems services)	
1.	Wages (Raw)	\$ _____
2.	Labor benefits. (25% of C.1, which includes overhead and profits)	\$ _____
D.	Materials (with taxes, freight and discounts)	\$ _____
E.	Equipment ²	\$ _____
F.	Subcontracts (Time and Materials cost)	\$ _____
G.	Utility Direct Costs	\$ _____
H.	Overhead and Profit	
1.	Labor (25% of A.1)	\$ _____
2.	Traffic Control (5% of B.3)	\$ _____
3.	Materials (25% of C)	\$ _____
4.	Subcontracts (5% of E)	\$ _____
5.	Utility Direct Costs (5% of F)	\$ _____
6.	Equipment (5% of E)	\$ _____
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 13.7.3 of the Agreement.

**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION III [For changes prior to Final Acceptance]

The status of System Acceptance is as follows:

- Unaffected by this Change Order Proposal
- Affected by (increasing) (decreasing) the date of System Acceptance by _____ calendar days.
- Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Punch List Acceptance is as follows:

- Unaffected by this Change Order Proposal
- Affected by (increasing) (decreasing) the date of System Acceptance 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 System Acceptance, Punch List Acceptance and Final Acceptance and Float are as follows:

1. System Acceptance: _____
(+ or - _____ days from base of _____ calendar days after NTP)
2. Punch List Acceptance: _____
(+ or - _____ days from base of _____ calendar days after NTP)
3. Final Acceptance: _____
(+ or - _____ days from base of _____ calendar days after NTP)
4. Number of days of Project Float _____

Justification for Change Order with reference to Agreement:

**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION IV [For changes after Final Acceptance]

Justification for Change Order with reference to Agreement:

The above four sections represent a true and complete summary of all aspects of this change.

This Change Order Proposal 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.

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**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ CONTRACT NO. _____

If the foregoing Change Order Proposal 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.

Integrator Project Manager

Date: _____

DRAFT

**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION IV (Reviewed by Project Manager)

Project Manager (Agreement)

Date

Comments:

DRAFT

**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION V (Reviewed by TxDOT Project Director)

TxDOT Project Director

Date _____

Comments:

DRAFT

**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION VI (Reviewed by FHWA Project Representative)(if applicable)

Date _____ **FHWA Project Representative** _____

Comments:

DRAFT

**CHANGE ORDER
REQUEST**

CHANGE ORDER PROPOSAL NO. _____ **CONTRACT NO.** _____

SECTION VII (Approval by TxDOT District Engineer and Deputy Director)

TxDOT District Engineer **Date**

TxDOT Deputy Director **Date**

Comments:

DRAFT

EXHIBIT L

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Representatives:

- _____
- Additional representatives designated in writing by _____ or the Toll Operations Division Director for specific matters

Integrator Representative:

- _____
- Additional representatives designated in writing by _____ for specific matters

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EXHIBIT M

DISPUTE RESOLUTION PROCEDURES

43 TAC § 9.1

Tex. Admin. Code tit. 43, § 9.1

§ 9.1. Claims for Purchase Contracts

a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain contract claims against the state. Chapter 2260 applies to purchase contracts of the Texas Department of Transportation entered into under the State Purchasing and General Services Act. This section governs the filing, negotiation, and mediation of a claim.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Claim--A claim for breach of a purchase contract between a vendor and the department.

(2) Department--The Texas Department of Transportation.

(3) Director of contract services--The director of the Contract Services Section of the department's Office of General Counsel.

(4) Executive director--The executive director of the department or the director's designee not below the level of office director.

(5) Purchase--A procurement action under Government Code, Title 10, Subtitle D, for commodities or non professional services.

(6) Vendor--An individual, partnership, corporation, or other business entity that is a party to a written contract for a purchase with the department.

(c) Filing of claim. A vendor may file a notice of claim with the director of contract services within 180 days after the date of the event giving rise to the claim. The claim must contain the:

(1) nature of the alleged breach;

(2) amount the vendor seeks as damages; and

(3) legal theory of recovery.

(d) Negotiation.

(1) The executive director will begin negotiations with the vendor to resolve the claim. The negotiations will begin no later than the 120th day after the date the claim is received.

(2) The negotiation may be written or oral. The executive director may afford the vendor an opportunity for a meeting to informally discuss the disputed matters and provide the vendor an opportunity to present relevant information.

(e) Mediation.

(1) The department and the vendor may agree to nonbinding mediation. The department will agree to mediation if the executive director determines that the mediation may speed resolution of the claim or otherwise benefit the department.

(2) The executive director will appoint a department employee as mediator. The employee must not have had any previous involvement or participation in the administration of the contract or the resolution of the claim.

(3) If the vendor objects to the appointment of a department employee as mediator, the department will select and hire a private mediator from outside the department. The costs for the services of a private mediator will be apportioned equally between the department and the vendor.

(4) The role of a mediator is limited to assisting the parties in attempting to reach an agreed resolution of the issues.

(f) Final offer.

(1) The executive director will make a final offer to the vendor within 90 days of beginning negotiations.

(2) If the disposition is acceptable to the vendor, the vendor shall advise the director of contract services in writing within 20 days of the date of the final offer. The department will forward an agreed disposition involving payment to the vendor for a final and binding order on the claim.

(g) Contested case hearing. If the vendor is dissatisfied with the final offer, or if the claim is not resolved before the 90th day after negotiations begin, the vendor may petition the executive director for an administrative hearing to litigate the unresolved issues in the claim under the provisions of § 1.21 et seq. of this title (relating to Procedures in Contested Cases).

Source: The provisions of this § 9.1 adopted to be effective July 23, 2000, 25 TexReg 6804; amended to be effective December 8, 2005, 30 TexReg 8180.

Current through August 31, 2011

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EXHIBIT N

LIST OF REFERENCE DOCUMENTS

For list of reference documents, go to following link:

[NTD: FTP link to be provided.]

Project: Toll System Integration and Maintenance

CSJ number: CSJ 0683-06-027

DRAFT

EXHIBIT O

FORM OF WARRANTY BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____, a _____, as “Principal” and _____, a _____ (the “Surety”), having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation, as “Obligee”, in the sum of \$_____ **[insert 20% of Project Segment Price]** (the “Bonded Sum”), for the payment whereof Principal and Surety bind themselves, and their heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee, has awarded to Principal, the Texas Statewide Toll System Integration and Maintenance Agreement, dated _____, _____ (the “Agreement”), on the terms and conditions set forth therein; and

WHEREAS, as a condition to Final Acceptance (as defined in the Contract), Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents after Final Acceptance, including payment of claims, subcontractors, suppliers, materialmen and mechanics, as a condition to release of the Performance Bond and Payment Bond by Obligee.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, as they may be amended or supplemented, including without limitation the fulfillment of all Warranties, and payment of claims, subcontractors, suppliers, materialmen and mechanics, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the Bonded Sum.

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 shall inure to the benefit of all subcontractors, suppliers, materialmen and mechanics with respect to the Work, other than entities having an equity interest in Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

3. The guarantees contained herein shall survive the Final Acceptance called for in the Contract Documents.

4. Whenever Principal shall fail to pay the lawful claims of any of the persons identified in item 2 above with respect to the Work, excluding entities having an equity interest in Principal, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

5. Whenever Principal shall be, and is declared by the Obligees to be, in default with respect to its obligations under the Contract Documents, provided that the Obligees is not then in material default thereunder, Surety shall promptly take one of the following actions with the consent of the Obligees:

- a. arrange for Principal to perform and complete the Contract;
- b. complete the Work in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors;
- c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees'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 Obligees the amount of damages as described in Paragraph 7 in excess of the unpaid balance of the [insert "Project Segment"] Price incurred by the Obligees resulting from the Principal's default; or
- d. waive its 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 it may be liable to the Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.

6. If Surety does not proceed as provided in Paragraph 5 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 Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 5.d, and the Obligees refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligees shall be entitled to enforce any remedy available to the Obligees.

7. After the Obligees 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 Obligees 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 **[insert "Project Segment"]** 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 Work;

b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and

c. Liquidated Damages and Stipulated Damages under the Contract.

8. 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 (as defined in the Contract), without the Sureties' prior written consent thereto having been obtained, does not increase the _____ **[insert "Project Segment"]** Price by more than \$_____ **[insert 10% of the Project Segment Price]**. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Contract) for TxDOT-Directed Changes in excess of such amount.

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

10. Initially capitalized terms not otherwise defined herein shall have the definitions set forth in Exhibit A of the Contract

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of _____, 200__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: Attorney-in-Fact
(Seal)

[ADD APPROPRIATE ACKNOWLEDGMENTS]

DRAFT

EXHIBIT P

FORM OF PROJECT SEGMENT SUPPLEMENT

**TXDOT STATEWIDE TOLL SYSTEM
INTEGRATION AND MAINTENANCE AGREEMENT**

PROJECT SEGMENT SUPPLEMENT

Project Segment No. _____

Location: _____

This Project Segment Supplement (“Supplement”) is made between the Texas Department of Transportation, a public agency of the State of Texas (“TxDOT”), and _____, a _____ (“Integrator”), effective as of _____, 20____, as set forth on the signature page hereto, with reference to the Statewide Toll System Integration and Maintenance Agreement between TxDOT and Integrator effective as of _____, _____ (as amended, the “Agreement”), with reference to the definitions contained in Exhibit A to the Agreement and the following recitals:

A. Pursuant to Section 2.1.1.2 of the Agreement, TxDOT has the right to designate Project Segments for incorporation into the Work that Integrator is required to perform pursuant to the Contract Documents.

B. TxDOT has designated the Project Segment described in the Project description attached hereto as Annex A for incorporation into the Work to be performed by Integrator pursuant to the Contract Documents.

C. The parties desire to enter into this Supplement to set forth their agreement regarding those matters required to be set forth in a Project Segment Supplement pursuant to Section 2.1.1.2 of the Contract Documents.

NOW, THEREFORE, in consideration of the sums to be paid Integrator by TxDOT, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

1. Project Segment Pricing

1.1 The Project Segment Price to be paid by TxDOT to Integrator as full compensation for the Work, other than the Maintenance Work, and warranty of the Project Segment shall be as set forth in Annex B-1.

1.2 The Project Segment Maintenance Price to be paid by TxDOT as full compensation for the Project Segment Maintenance Work shall be as set forth in Annex B-2.

2. Project Segment Completion Deadlines

The Project Segment System Acceptance Deadline is set forth in Annex C. Other Project Segment Completion Deadlines, determined in accordance with the time frames set forth in Section 4.2 of the Agreement, are set forth in Annex C.

3. Liquidated Damages

Liquidated Damages payable pursuant to Section 17.2 of the Agreement shall be \$ _____ per Day.

4. Project Segment-Specific Modifications to Contract Documents

Annex D-1 sets forth any Project Segment-specific modifications to the Contract Documents. These modifications shall only apply to the Project Segment for which this Supplement identifies and not for any other purpose under the Agreement. Federal Prevailing Wage requirements applicable to the Project Segment Work shall be as set forth in Annex D-2.

5. Reference Documents/Owner Design Documents

Annex E lists the information that TxDOT has provided to Integrator in connection with the Project Segment, including Reference Documents and available Owner Design Documents.

6. TxDOT Supplied Project Approvals

Annex F lists of TxDOT-Provided Approvals supplied by TxDOT for the Project Segment. Responsibility for obtaining all other required Governmental Approvals shall be as set forth in the Agreement.

7. Key Personnel

Annex G lists the Key Personnel applicable to the Project Segment.

8. Integrator's Representations, Warranties and Covenants

Integrator hereby renews and makes with respect to the Project Segment all of the Integrator's representations, warranties and covenants set forth in Section 2.4 of the Agreement, effective as of the date hereof.

9. Terms of Agreement

This Supplement shall be incorporated into the Agreement and constitutes a material part thereof as if originally set forth in the Agreement. Except as expressly provided in this Supplement, all terms and conditions of the Agreement shall apply to the Project Segment Supplement Work, and the parties' rights and obligations with

respect to the Project Segment shall be as provided in the Agreement. The Agreement remains in full force and effect except as expressly supplemented hereby.

IN WITNESS WHEREOF, this Supplement has been executed as of _____, 20__.

Integrator:

Texas Department of Transportation

By: _____

By: _____

Name: _____

Title: _____

Registration No.: _____

Date: _____

APPROVED AS TO FORM:

By: _____

[if a Guarantor is required under the Agreement, insert the below]

Acknowledged, approved and consented to by:

Guarantor:

By: _____

Name: _____

Title: _____

ANNEX A TO PROJECT SEGMENT SUPPLEMENT

PROJECT SEGMENT DESCRIPTION

[To be attached.]

DRAFT

ANNEX B-1 TO PROJECT SEGMENT SUPPLEMENT

PROJECT SEGMENT PRICE

[Attached.]

DRAFT

ANNEX B-2 TO PROJECT SEGMENT SUPPLEMENT

PROJECT SEGMENT MAINTENANCE PRICE

[Attached.]

DRAFT

ANNEX C TO PROJECT SEGMENT SUPPLEMENT

PROJECT SEGMENT COMPLETION DEADLINES

Project Segment System Acceptance Deadline: _____, 20__

Project Segment Punch List Acceptance Deadline: _____, 20__
(30 Days after Project Segment System Acceptance Deadline)

Project Segment Final Acceptance Deadline: _____, 20__
(120 Days after Project Segment System Acceptance Deadline)

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ANNEX D TO PROJECT SEGMENT SUPPLEMENT
**LIST OF PROJECT SEGMENT-SPECIFIC MODIFICATIONS TO CONTRACT
DOCUMENTS**

[To be inserted.]

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ANNEX E TO PROJECT SEGMENT SUPPLEMENT

LIST OF REFERENCE DOCUMENTS AND OWNER DESIGN DOCUMENTS

[To be inserted.]

DRAFT

ANNEX F TO PROJECT SEGMENT SUPPLEMENT

LIST OF TxDOT-PROJECT APPROVALS FOR PROJECT SEGMENT

[To be inserted.]

DRAFT

ANNEX G TO PROJECT SEGMENT SUPPLEMENT
LIST OF KEY PERSONNEL FOR PROJECT SEGMENT

[To be inserted.]

DRAFT

EXHIBIT Q

FORM OF LETTER OF CREDIT

(ISSUING BANK)

IRREVOCABLE LETTER OF CREDIT NO. _____

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

Ladies and Gentlemen:

At the request and for the account of _____ (“Integrator”) _____ **[Integrator’s address]**, we hereby issue this irrevocable stand-by letter of credit (“Letter of Credit”) pursuant to the Statewide Toll System Integration and Maintenance Agreement dated _____, _____, as the same may be amended, modified or supplemented from time to time (the “Agreement”) in the initial amount of \$ _____ **[insert the greater of \$1,000,000 or 20% of the aggregate Project Segment Price for Work under NTP, not to exceed \$20,000,000]** (the “Stated Amount”). An amount not to exceed the Stated Amount may be drawn under this Letter of Credit with respect to the occurrence of a Drawing Event (as defined below).

Funds under this Letter of Credit will be made available to you against receipt by us of a Demand for Payment (as defined below), duly completed and purportedly signed by a representative of the Texas Department of Transportation (“Beneficiary”). Any such Demand for Payment shall be presented at our office located at the address set forth below or at any other office in the same city which may be designated by written notice delivered by us to you. Each Demand for Payment hereunder may be made up to the close of business on the Stated Expiration Date. Multiple partial drawings are permitted hereunder with respect to the occurrence of a Drawing Event.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central standard time, on a day on which we shall be open for business (a “Business Day”), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central standard time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, local

time of the location of the account designated below or such other account you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: Austin Texas Comptroller Austin
Routing Number: _____
Account Number: Comptroller of Public Accounts Treasury Operations
Account Number to Credit: _____
Reference: **[Integrator]** Letter of Credit/Statewide Toll System
Attention: 601 - Texas Department of Transportation
Diane Ruiz

If any Demand for Payment delivered by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice thereof, stating the reasons therefor and that we will upon your instructions hold any document at your disposal or return the same to you. Upon receipt of any such notice, you may attempt to correct any such non-conformance; provided, however, that any Demand for Payment presented to correct such non-conforming demand must be presented on or prior to the expiration of this Letter of Credit.

The Letter of Credit may be transferred by you upon receipt by us of a transfer request in the form attached hereto as Annex B accompanied by this original Letter of Credit.

In the event of any drawing by you hereunder, we shall immediately notify Integrator of such drawing, and request that Integrator reimburse us in the amount of such drawing, plus any interest earned thereon. If, and to the extent that, Integrator reimburses us prior to the termination date hereof for any amounts drawn by you hereunder, the available amount under this Letter of Credit shall be increased by the amount of Integrator's reimbursement.

Except as expressly stated herein, this Letter of Credit is not subject to any condition or qualification. We engage with you that all Demands for Payment made in compliance with the terms of this Letter of Credit will be duly honored upon delivery of documents as specified if presented at this office in the manner described above on or before _____, 200_ (the "Stated Expiration Date").

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for an additional period(s) of one year from the present or any future Stated Expiration Date, unless at or before sixty (60) days prior to any such Stated Expiration Date we shall notify the Beneficiary by registered mail or overnight courier at the above address that we elect not to consider this Letter of Credit extended for any such additional one year period. However, the final expiration date of this Letter of Credit will be _____, 2020.

This Letter of Credit shall become effective immediately, and shall automatically terminate on the earliest to occur of (i) our honoring of a drawing hereunder in an amount equal to the Stated Amount, or (ii) the close of business on the Stated Expiration Date or any extended date as provided herein.

All notices (including without limitation presentation of any Demand for Payment) to be made to us under this Letter of Credit shall be in writing, shall refer to this Letter of Credit by number, and shall be delivered by hand or sent by registered or certified mail, postage prepaid, return receipt requested, if to us at **[address]**, **[attention]**, or at such address as we shall notify you in writing.

As used herein:

- (i) “Demand for Payment” shall mean the delivery to us of a certificate in the form attached as Annex A hereto.
- (ii) “Drawing Event” shall mean the occurrence of any event under paragraph (2) of the Demand for Payment.

The Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, (including the Agreement), instrument or agreement referred to or to which the Letter of Credit relates (except only the certificates referred to herein); and any such reference shall not be deemed to incorporate herein by reference any document (including the Agreement), instrument or agreement (except for such certificates). The obligations of the Issuing Bank under this Letter of Credit are the individual obligations of the Issuing Bank and are in no way contingent upon reimbursement with respect thereto from Integrator or any other party.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices (“ISP98”), International Chamber of Commerce Publication No. 590 (the “Uniform Customs”), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.

This letter of Credit shall be deemed to be a Contract made under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at _____, Attention: _____, specifically referring to the number of this Letter of Credit.

Very truly yours,

[ISSUING BANK]

By: _____

Name: _____

Title: _____

DRAFT

ANNEX A

TO LETTER OF CREDIT
DEMAND FOR PAYMENT CERTIFICATE

Date: _____

[ISSUING BANK]

RE: Irrevocable Letter of Credit No. _____ (the "Letter of Credit")

The undersigned, a representative of the Texas Department of Transportation (the "Beneficiary"), hereby certifies to **[Issuing Bank]** as follows:

1. The Beneficiary is making a Demand for Payment under the above-referenced Letter of Credit in the amount of US \$ _____ (the "Requested Drawing Amount") for credit to Account No. _____ of the Beneficiary at **[institution and location of institution]**.
2. [Choose the applicable alternative]

To the best of the Beneficiary's knowledge, under the terms of the Agreement, the Integrator has failed to perform one or more of its obligations pursuant thereto and the Beneficiary is entitled to exercise this Letter of Credit under the terms thereof.

To the best of the Beneficiary's knowledge, such failure or event is of a nature [Select one: (i) not requiring a notice to remedy under the terms of the Agreement or (ii) requiring a notice to remedy under the terms of the Agreement (and attached hereto is a copy of the Beneficiary's written notice to the Integrator requiring the remedy of such failure or event by the Integrator and of the Beneficiary's intention to draw upon the referenced Letter of Credit in respect of such failure or event along with either (x) the registered postal receipt, fax confirmation or overnight courier confirmation for such demand or (y) acknowledgement of receipt of service of such demand from the Integrator's agent for service in Texas).]

As a result of Integrator's failure to perform such obligation(s), the Beneficiary is entitled to draw _____ **[insert amount]** on the Letter of Credit.

or

The Beneficiary is entitled to draw _____ **[insert amount]** on the Letter of Credit pursuant to Section 8.2.2 of the Agreement.

or

The Beneficiary is entitled to draw _____ **[insert amount]** on the Letter of Credit pursuant to Section 8.2.3 of the Agreement.

or

The Beneficiary is entitled to draw _____ **[insert amount]** on the Letter of Credit pursuant to Section 8.2.4 of the Agreement.

or

The Beneficiary is entitled to draw _____ **[insert amount]** on the Letter of Credit pursuant to Section 8.2.5 of the Agreement.

or

The Beneficiary is entitled to draw _____ **[insert amount]** on the Letter of Credit because the Beneficiary has received written notice from you that the Letter of Credit will not be renewed and as of sixty (60) days prior to the expiration of the Letter of Credit, Integrator has not delivered to Beneficiary a satisfactory substitute or replacement Letter of Credit containing terms identical to those set forth in this Letter of Credit or other terms acceptable to Beneficiary in its sole discretion within the time periods set forth in the Agreement.

3. The Requested Drawing amount, stated in paragraph 1 above, was computed in compliance with the terms and conditions of the Letter of Credit, does not exceed the Stated Amount of the above-referenced Letter of Credit and does not exceed the amount available to be drawn under such Letter of Credit.
4. This Demand for Payment is made before the Stated Expiration Date of the Letter of Credit.

Capitalized terms used herein (without definition) shall have the respective meanings set forth in the above-referenced Letter of Credit.

IN WITNESS WHEREOF, the undersigned, the **[office held]** of the Texas Department of Transportation has executed and delivered this Certificate as of the _____ day of _____.

[Name]

ANNEX B
TO
LETTER OF CREDIT
TRANSFER REQUEST

To: [Issuing Bank]

RE: Irrevocable Letter of Credit No. _____

We hereby request you to transfer all our rights as beneficiary under the Letter of Credit referenced above to a second beneficiary named below.

Name of second beneficiary

Address

We do hereby transfer all our rights as the original beneficiary, including all rights to make drawings under the Letter of Credit, to the second beneficiary. The second beneficiary shall have sole rights as beneficiary, whether existing now or in the future, including rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly by the second beneficiary without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by processing the letter of credit and sending it to the second beneficiary with your customary notice of transfer.

Your transfer fee:

Enclosed is our check for \$ _____.

You may debit our Account No. _____

We also agree to pay you on demand any expenses which may be incurred by you in connection with this transfer.

Name of beneficiary

Address

EXHIBIT R

TECHNICAL PROVISIONS COMPLIANCE MATRIX

[NTD: Insert Technical Compliance Matrix from Integrator's Proposal.]

DRAFT

EXHIBIT S

FORM OF MAINTENANCE PAYMENT DRAW REQUEST

Draw Request # _____

Date: _____
month/day/year

Texas Department of Transportation
125 E. 11th Street
Austin, TX 78761

"Entry Required in Cell"

Draw Request for Work performed for the period: _____ month/day/year to _____ month/day/year

Original Contract Maintenance Price (per month)

Approved Change Order Amounts

Revised Contract Maintenance Price (for the current month)

Current Monthly Payment Request

Cumulative Contract Maintenance Price Earned to Date

Printed Name
Integrator'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 2 of 2 for Draw Request Checklist)

MAINTENANCE PAYMENT REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- Monthly progress report as described in Section 7 of the Technical Provisions
- Certifications by the Project Manager and maintenance manager;
- Work conforms to the approved and updated (if applicable) Maintenance Plan;
- Monthly report of personnel hours;
- Payment Request data sheet(s), documents and summary that support and substantiate the Performance Requirements have been met;
- Maintenance On Line Management System documenting all maintenance activities at a minimum including operating statistics and system accuracy and availability, inventory and other requested information, special events and incidents ;
- Certification by the TSSQM that the Maintenance On Line Management System is performing according to required specifications;
- Submitted and approved System updates, As- Built Documents and changes to the Maintenance Plan and Procedures, Open Road Toll System manual if applicable;
- Sealed envelop of current updated Software Source Code to the Source Code Escrow, if applicable.

NOTE – following for information only

Maintenance Payment Request, Integrator shall submit a certificate in a form approved by TxDOT and signed and sealed by the Project Manager and maintenance manager, certifying that:

- ◆ Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, Suppliers and Fabricators, which is the subject of the Maintenance Payment Request conforms to the required performance specifications and has been checked and/or inspected by the TSSQCM (with respect to Toll System Maintenance) and the CQAM (with respect to roadway maintenance Work);

- ◆ Except as specifically noted in the certification, all Work which is the subject of the Maintenance Payment Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law; and
- ◆ The TSSQP and the CQP and all of the measures and procedures provided therein are functioning properly and are being followed.

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EXHIBIT T
[INTENTIONALLY OMITTED]

DRAFT

EXHIBIT U-1

PROJECT DELIVERY UNIT PRICES

[NTD: Insert Project Delivery Unit Prices from Integrator's Proposal.]

DRAFT

EXHIBIT U-2

MAINTENANCE UNIT PRICES

[NTD: Insert Maintenance Unit Prices from Integrator's Proposal.]

DRAFT

EXHIBIT U-3

HYPOTHETICAL PROJECT SEGMENT SCENARIO

This project involves the implementation of four ramp toll gantries on State Highway (SH) 45 North at O'Connor Drive in Austin, Texas. The four new ramps will provide access to and from SH 45 N at O'Connor Drive. This Supplement includes four one-lane toll gantries; two on at-grade ramps and two on elevated ramps, as depicted in Figure 1 below.

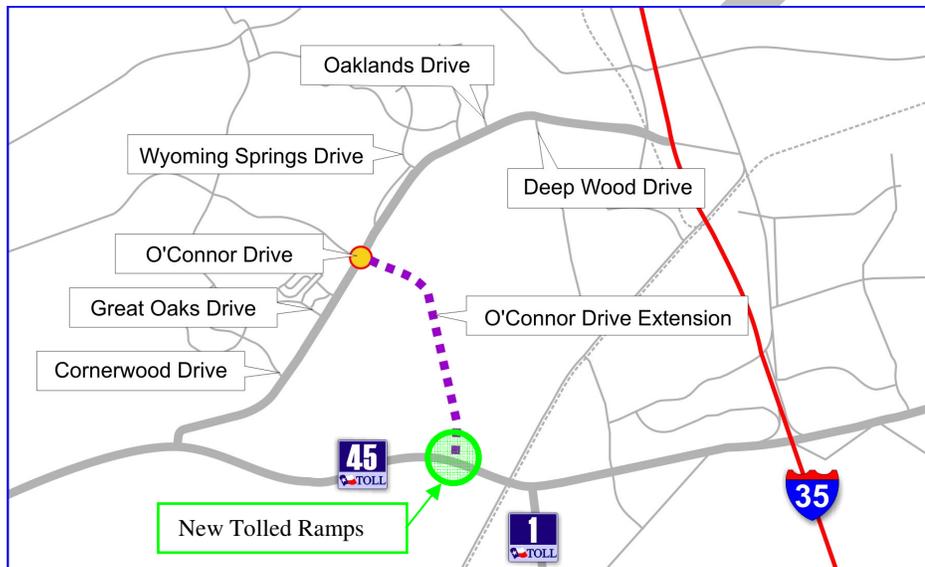


Figure 1 – New SH 45 N Ramp Locations

The Toll System shall be designed in accordance with the Agreement, including TxDOT toll system design and performance standards utilizing the values set forth or referenced in the Technical Provisions. Specifically, this project consists of providing a fully integrated Automatic Vehicle Identification (TxTag) and Pay By Mail System.

The toll gantries will be located at the following approximate SH 45 N centerline stations as detailed below:

1. Ramp 9 East (RE09U)
 - a. At-grade entrance ramp from eastbound frontage road to eastbound main lanes
 - b. Area provided for toll equipment and maintenance vehicle
2. Ramp 9 West (RW09U)
 - a. At-grade exit ramp from westbound main lanes to westbound frontage road
 - b. Area provided for toll equipment and maintenance vehicle
3. Ramp North-West DC (RNWDC)

- a. Elevated exit ramp from north-west direct connector to westbound frontage road
 - b. No area provided on structure for toll equipment and maintenance vehicle
 - c. Ramp will be shut down for gantry maintenance
 - d. Toll gantry will be ground-mounted along north side of ramp (south side is underneath existing DC and would be difficult to construct)
 - e. Toll cabinets will be located in maintenance area for RW09U
4. Ramp East-South DC (RESDC)
- a. Elevated entrance ramp from eastbound frontage road to east-south Direct Connector
 - b. Area provided on structure for toll equipment and maintenance vehicle (pickup truck, not bucket truck)
 - c. Ramp will be shut down for gantry maintenance

The elevated ramp (RESDC) shall utilize 45' tall cantilever overhead sign structures, reaching to footings at grade.

The existing SH 45 N toll collection system is currently in operation and collecting tolls. Only the O'Connor ramps, shown in Figure 1, will be constructed in their entirety under this project. Integrator will be responsible for coordinating its Work efforts, through the Austin District and Area Office, with other contractors who may be on-site in order to minimize conflicts and potential delays.

The Integrator shall fabricate and install ground mounted toll rate and TxTag or Pay By Mail signs on the approaches to the toll ramps.

The Integrator shall install new conduit between site RE09U and the nearest TxDOT duct bank ground box. Within this, the Integrator shall install single mode fiber and splice into the TxDOT existing fiber plant in the ground box, connecting to dark fibers identified by TxDOT to be provided to the Integrator. The Integrator shall further install multimode fiber in the same conduit and pull this to site RESDC via a spare tube in the TxDOT duct bank to the nearest ground box in proximity to site RESDC. All required conduit will be provided by others. The Integrator shall furnish and install any necessary fiber-optic transceivers and jumpers in patch panels between site RE09U and the Integrator provided network at the TxDOT CSC, using information and fiber assignments provided by TxDOT to the Integrator.

The Integrator will support TxDOT in the execution of User Acceptance Testing, executed by TxDOT and their consultants, requiring an effort lasting no longer than one week.

EXHIBIT U-4

HYPOTHETICAL PROJECT DELIVERY PRICE

[NTD: Insert from Proposal.]

DRAFT

EXHIBIT U-5

HYPOTHETICAL MAINTENANCE PRICE

[NTP: Insert from Proposal.]

DRAFT

EXHIBIT W

FORM OF SOURCE CODE ESCROW AGREEMENT

SOURCE CODE ESCROW AGREEMENT

Account Number _____

This Source Code Escrow Agreement ("Agreement") is effective _____, 20__ among _____, a _____ ("Escrow Agent"), _____, a _____ ("Depositor"), The Texas Department of Transportation ("Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

A. Depositor and Beneficiary have entered or will enter into a Statewide Toll System Integration and Maintenance Agreement (referred to in this Agreement as the "Contract") under the terms of which Depositor has granted Beneficiary licenses to use certain software and supporting materials, and Depositor will from time to time modify, add to, refine, substitute, revise, enhance, update, revise, upgrade and/or correct such software and supporting materials and will submit these updated software development documents on an ongoing basis as the same occur, but at a minimum with each Draw Request for payment based upon Milestones relating to Software development, and for Maintenance Price Payment Draw Requests. Capitalized terms used herein without definitions shall have the meanings given to such terms in the Contract.

B. Depositor has agreed in the Contract to deposit into escrow with Escrow Agent the Software Source Code and related documentation of Software required to be delivered as part of the Work under the Contract, including Source Code in ASCII format, on industry standard media and source code listings in human readable form of the Software as well as paper and electronic copies of the functional specifications and design specifications, code and documentation for tests used by Depositor to verify Software behavior, and user and technical documentation (all of which, together with modifications, additions, enhancements, updates, revisions, upgrades and corrections thereto and thereof, and all other supplementary deposits under Section 1.1 below, being collectively referred to in this Agreement as the "Source Code").

C. Depositor and/or its Software suppliers desire to avoid disclosure of the Source Code except under certain limited circumstances.

D. The availability of the Source Code to Beneficiary is critical in the conduct of its business and, therefore, Beneficiary needs access to the Source Code under certain limited circumstances.

E. Depositor and Beneficiary desire to establish an escrow with Escrow Agent to provide for the retention, administration and controlled access of the Source Code.

F. Escrow Agent has consented to act as Escrow Agent and to receive and hold the current version and any future versions of the Source Code.

G The parties desire this Agreement to be supplementary to the Contract pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

NOW, THEREFORE, Depositor and Beneficiary hereby engage Escrow Agent to serve as Escrow Agent for the Source Code, Escrow Agent hereby accepts such engagement, and the Parties hereby agree to the establishment and administration of an escrow for the Source Code, on the following terms and conditions.

ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposits.

a. Immediately upon execution of this Agreement, Depositor shall deposit pre-existing Source Code to be used in connection with the Project with Escrow Agent.

b. Based on Draw Requests for Milestones related to Software System development, Depositor shall deposit the then current version of the Source Code under development by Depositor for the required Work for the Project Segments with the Escrow Agent. Depositor shall be required to submit an updated Source Code document reflecting the then current version of the Software Source Code with each Draw Request.

c. Not later than the date a Certificate of Project Segment System Acceptance is issued by the Beneficiary as to a Project Segment, Depositor shall deposit with Escrow Agent the then current approved and accepted version of the Source Code that has been developed for the Project.

d. If during any calendar quarter after the date a Certificate of Project Segment System Acceptance is issued by the Beneficiary as to a Project Segment Depositor completes and installs in or for the Project any modification, addition, enhancement, update, revision, upgrade or correction of or to any of the Source Code, it shall deposit with Escrow Agent, within 30 days after the end of such calendar quarter, each such modification, addition, enhancement, update, revision, upgrade and correction, and a modified Attachment A identifying the same. Similarly, if Depositor identifies any additional Source Code to be deposited pursuant to Section 21.8.4 of the Contract, it shall deposit with Escrow Agent such additional Source Code and a modified Attachment A identifying the same within 30 days following the end of the calendar quarter in which such identification is made. All references in this Agreement to Source Code shall include the initially deposited materials and any materials subsequently deposited pursuant to this Section 1.1(d).

e. Without limiting the foregoing, Depositor also shall deposit in escrow with Escrow Agent, prior to and as a condition to Final Acceptance of a Project Segment, each version of the Source Code in effect on such Final Acceptance Date, together with a modified Attachment A identifying the same.

f. Each deposit under subsection d. or e. above shall be added to the existing deposit. Each deposit under subsections b. or c. above shall be listed on a modified Attachment A and Depositor shall sign each modified Attachment A. Attachment A and each modified Attachment A shall be held and maintained separately within the escrow account. Escrow Agent shall create an independent record which documents the activity for A and each modified Attachment A. The processing of all deposits under this Section 1.1 shall be in accordance with Sections 1.2 through 1.6 below.

1.2 Identification of Tangible Media. Prior to each delivery of the Source Code to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Source Code are written or stored. Additionally, with each delivery Depositor shall complete Attachment A to this Agreement or a modified Attachment A by listing each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Source Code (whether Depositor or a Software Supplier). Depositor shall sign each Attachment A or modified Attachment A and deliver it to Escrow Agent with the Source Code. Such signature shall constitute Depositor's representation and warranty that Attachment A is true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3 Deposit Inspection. Within three business days after Escrow Agent receives Source Code and Attachment A or a modified Attachment A, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on Attachment A or modified Attachment A. In addition to the deposit inspection, Beneficiary may elect to cause a verification of the Source Code in accordance with Section 1.6 below.

1.4 Acceptance of Deposit. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on Attachment A or the modified Attachment A, Escrow Agent shall date and sign Attachment A or the modified Attachment A and mail a copy thereof to Depositor and Beneficiary. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on Attachment A or the modified Attachment A, Escrow Agent shall (a) note the discrepancies in writing on Attachment A or the modified Attachment A; (b) date and sign Attachment A or the modified Attachment A with the exceptions noted; and (c) mail a copy of Exhibit A or the modified Exhibit A to Depositor and Beneficiary. Escrow Agent's acceptance of the deposit occurs upon the signing of Attachment A or the modified Attachment A by Escrow Agent. Delivery of the signed Attachment A or the modified Attachment A to Beneficiary is Beneficiary's notice that the Source Code have been received and accepted by Escrow Agent.

1.5 Depositor's Representations. Depositor represents and warrants to Beneficiary as follows:

- a. Depositor lawfully possesses all of the Source Code deposited with Escrow Agent;
- b. With respect to all of the Source Code, Depositor has the right and authority to grant to Escrow Agent and Beneficiary the rights as provided in this Agreement;
- c. The Source Code are not subject to any lien or other encumbrance;
- d. The Source Code consist of the proprietary technology and other materials identified either in the Contract or Attachment A, as the case may be; and
- e. The Source Code are readable and useable in their current form or, if any portion of the Source Code is encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Verification. Beneficiary shall have the right, at Beneficiary's expense, to cause a verification of any Source Code. Beneficiary shall notify Depositor and Escrow Agent of Beneficiary's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Source Code. If a verification is elected after the Source Code have been delivered to Escrow Agent, then only Escrow Agent, or at Escrow Agent's or Beneficiary's election an independent person or company selected and supervised by Escrow Agent or Beneficiary, may perform the verification. If Beneficiary elects to have an independent person or company perform the verifications, its election and selection shall prevail over any such election by Escrow Agent. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Source Code and whether the Source Code are all the Source Code. If Escrow Agent or a person or company it selects performs the verification, Escrow Agent shall deliver to Beneficiary a written report thereon not later than 30 days after Beneficiary delivers its written request therefor. Any verification shall take place either at Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If Beneficiary elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the Contract.

1.7 Removal of Source Code. The Source Code may be removed and/or exchanged only on written instructions signed by both the Depositor and Beneficiary, or as otherwise provided in this Agreement.

1.8 Inspection. Beneficiary and Depositor shall be entitled, during normal business hours, to inspect, under the supervision of an officer of Escrow Agent and at Escrow Agent's facilities, the physical and technical status and condition of the Software. The party undertaking the inspection shall provide written notice (delivered by mail or facsimile with acknowledged transmission) of the pending inspection to the other party, seven calendar days prior to the scheduled date of the inspection. The party receiving

the notice shall have the right to be present at the inspection, but such presence is not a condition precedent to the inspecting party's right to proceed with inspection.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. Escrow Agent shall maintain the Source Code in a secure, environmentally safe, fireproofed vault or locked facility which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the obligation to reasonably protect the confidentiality of the Source Code. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available or use the Source Code. Escrow Agent shall not disclose the content of this Agreement to any third party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Source Code, Escrow Agent shall immediately notify the other Parties unless prohibited by law. It shall be the responsibility of Depositor and/or Beneficiary to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal. (See Section 7.5 below for notices of requested orders.)

2.2 Status Reports. Escrow Agent shall issue to Depositor and Beneficiary a report profiling the account history at least semi-annually. Escrow Agent may provide copies of the account history pertaining to this Agreement upon the request of any other Party.

2.3 Audit Rights. During the term of this Agreement, Depositor and Beneficiary shall each have the right to inspect the written records of Escrow Agent pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

ARTICLE 3 -- TITLE TO MEDIA

3.1 Title to Media. Title to the media, materials and documents upon which the Source Code is written or stored is vested in Beneficiary pursuant to Section 21.8.1 of the Contract, but is subject to the provisions of this Agreement on access to and release of such media, materials and documents.

3.2 Disclaimer. Depositor and Escrow Agent hereby disclaim and relinquish any title to or ownership of the media, materials and documents upon which the Source Code is written or stored. In addition, Escrow Agent hereby disclaims and relinquishes any title to or ownership of Source Code deposited with Escrow Agent under this Agreement.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean any of the following:

- a. Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 7 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the

relief of debtors are instituted by or against Depositor, or by or against any Software Supplier as to deposited Source Code it owns (other than bankruptcy proceedings instituted by Depositor or any such Software Supplier against third parties), and, if instituted against Depositor or any such Software Supplier, are allowed against Depositor or any such Software Supplier or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution;

b. A custodian, trustee or receiver is appointed for Depositor or any such Software Supplier or any substantial part of its assets;

c. Depositor or any such Software Supplier makes or attempts to make an assignment for the benefit of creditors;

d. Depositor or any such Software Supplier generally fails to pay its debts when they are due or admits of its inability to pay its debts;

e. Depositor or any such Software Supplier fails to provide necessary and commercially feasible updates and maintenance releases, or otherwise is in material breach of its software development and support obligations under the Contract;

f. The Contract is terminated pursuant to its terms because of an "Event of Default";

g. Depositor or any such Software Supplier ceases to do business in the ordinary course or is unwilling or unable to perform its obligations under the Contract; or

h. Subject to the limitations in Section 4.5 of this Agreement and the Contract, and subject to Beneficiary's payment of the Software License Fee to Beneficiary as provided in Section 21.8.1 of the Contract, Beneficiary requires the release of the Source Code for the limited purpose of the development of a Project Segment by an RMA or an Other TxDOT Integrator other than Depositor.

4.2 Filing For Release. If Beneficiary believes in good faith that a Release Condition has occurred, Beneficiary may provide to Escrow Agent written notice of the occurrence of the Release Condition and a request for the release of the Source Code. If the Release Condition pertains only to a Software Supplier, Beneficiary's notice shall so indicate. Immediately upon receipt of such notice, Escrow Agent shall provide a copy of the notice to Depositor by commercial express mail.

4.3 Contrary Instructions. From the date Escrow Agent mails the notice requesting release of the Source Code, Depositor shall have ten days to deliver to Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean and be limited to the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Depositor that (a) the person signing for Depositor is an authorized officer or authorized delegate of Depositor

and (b) a Release Condition has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such ten-day period, Escrow Agent shall send a copy to Beneficiary by commercial express mail. Additionally, Escrow Agent shall notify both Depositor and Beneficiary that there is a dispute to be resolved pursuant to Section 7.3 of this Agreement. Subject to Section 5.2 of this Agreement, Escrow Agent shall continue to store the Source Code without release pending (i) joint instructions from Depositor and Beneficiary; (ii) dispute resolution pursuant to Section 7.3; or (iii) order of a court. Contrary Instructions received after such ten-day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

4.4 Release of Deposit.

a. If Escrow Agent does not receive Contrary Instructions from the Depositor within such ten-day period, Escrow Agent is authorized to, and shall, immediately release the Source Code to the Beneficiary. If the Release Condition pertains only to a Software Supplier, then Escrow Agent shall only release the Source Code that (a) is identified on Attachment A as owned by such Software Supplier or (b) lacks identification of ownership on Attachment A. Any copying expense will be chargeable to Depositor. This Agreement shall terminate upon the release of all the Source Code held by Escrow Agent.

b. Escrow Agent shall promptly release all or any part of the Source Code at any time and from time to time upon receipt of written instructions signed by both Depositor and Beneficiary.

c. Escrow Agent shall also release the Source Code to Beneficiary at any time as directed or ordered by an arbitration award, by a final judgment of a court of competent jurisdiction, or by other final dispute resolution pursuant to Section 7.3. If Beneficiary provides to Escrow Agent a written opinion of counsel for Beneficiary to the effect that such award, judgment or resolution is final and not appealable, Escrow Agent shall proceed with release in accordance with the award, judgment or resolution and may rely on such legal opinion.

4.5 Right to Use Following Release. Upon release of the Source Code in accordance with this Article 4, Beneficiary shall have the right and license to use the released Source Code as provided in the Contract. Beneficiary shall be obligated to maintain the confidentiality of the released Source Code as provided in the Contract.

ARTICLE 5 -- **TERM AND TERMINATION**

5.1 Term of Agreement. The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Article 5. This Agreement shall be terminated in the event (a) Depositor and Beneficiary jointly instruct Escrow Agent in writing that the Agreement is terminated; or (b) Escrow Agent instructs Depositor and Beneficiary in writing that the Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3. If the Source Code are subject to another escrow agreement with Escrow

Agent, Escrow Agent reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide written notice of delinquency to all Parties. Any Party shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such notice, then Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all Parties. Escrow Agent shall have no obligation to take any action under this Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the Source Code and transfer or dispose of the Source Code following termination as provided in this Article 5.

5.3 Termination by Resignation. Escrow Agent reserves the right to terminate this Agreement, for any reason, by providing Depositor and Beneficiary with 90-days' written notice of its intent to terminate this Agreement. Within the 90-day period, the Depositor and Beneficiary shall use diligent efforts to enter into a substantially similar agreement with another entity willing and able to perform the functions of Escrow Agent hereunder and thereupon shall provide Escrow Agent with joint written instructions authorizing Escrow Agent to forward the Source Code to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the Source Code in accordance with any such joint written instruction. If Escrow Agent does not receive said joint written instructions within 90 days of the date of Escrow Agent's written termination notice, then Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Source Code and transfer or dispose of Source Code following termination as provided in this Article 5.

5.4 Disposition of Source Code Upon Termination. Upon termination of this Agreement, Escrow Agent shall destroy, return, or otherwise deliver the Source Code in accordance with Depositor's and Beneficiary's joint written instructions. If there are no such joint written instructions, Escrow Agent may, at its sole discretion, commence legal action interpleading Depositor and Beneficiary, deposit the Source Code with the court in such action and otherwise handle and dispose of the Source Code in accordance with court order. In no event shall Escrow Agent have the right to destroy the Source Code or return them to Depositor absent joint written instructions to such effect or final order of a court of competent jurisdiction.

5.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's representations and warranties (Section 1.5);
- b. The obligations of safekeeping and confidentiality with respect to the Source Code set forth in Section 2.1;

- c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Source Code has occurred prior to termination;
- d. The obligation to pay Escrow Agent any fees and expenses due;
- e. The obligations of Escrow Agent under Section 5.4;
- f. The provisions of Article 7; and
- g. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 -- ESCROW AGENT'S FEES

6.1 Fee Payment and Schedule. Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided, which shall be the responsibility of Beneficiary. Escrow Agent shall notify Beneficiary at least 60 days prior to any increase in fees. For any service not listed on Escrow Agent's standard fee schedule, Escrow Agent shall provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. Fees are due 30 days after receipt of an invoice from Escrow Agent detailing the services performed and setting forth fees therefor consistent with the then applicable fee schedule. Escrow Agent may deliver invoices not more frequently than monthly. Except for action to hold and safeguard the Source Code and transfer or dispose of the Source Code following termination as provided in this Article 5, Escrow Agent shall not be required to perform any service whenever any undisputed outstanding balance owed to Escrow Agent is not paid when due.

ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 4.3(a), Escrow Agent may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

7.2 Indemnification. Depositor and Beneficiary each agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by Escrow Agent relating in any way to this escrow arrangement except to the extent such Liabilities were caused by the negligence or willful misconduct of Escrow Agent or its breach of this Agreement.

7.3 Dispute Resolution. Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Parties, shall be subject to resolution in accordance with the dispute resolution provisions of the DBEC, and any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Beneficiary, Escrow Agent and the O&M Contractor shall be subject to resolution in accordance with the dispute resolution provisions of the OMC. Escrow Agent agrees to be bound by any such final resolution. Notwithstanding the foregoing, any suit in interpleader brought by Escrow Agent under Section 5.4 shall not be by arbitration and may be brought by Escrow Agent in any court having jurisdiction.

7.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of law provisions.

7.5 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Escrow Agent to take, or refrain from taking, any action, that Party shall:

- a. Give Escrow Agent at least two business days' prior notice of the hearing; and
- b. Ensure that Escrow Agent not be required to deliver the original (as opposed to a copy) of the Source Code if Escrow Agent may need to retain the original in its possession to fulfill any of its other duties under this Agreement.

ARTICLE 8 -- GENERAL PROVISIONS

8.1 Escrow Agent Representation. Escrow Agent hereby represents and warrants to Beneficiary and Depositor that (a) to the best knowledge of Escrow Agent neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery or fraud in connection with any public contract in the State of Texas or any other jurisdiction, except as has been specifically disclosed in writing to Beneficiary and Depositor, and (b) should any such conviction or indictment be obtained or any such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, Escrow Agent will immediately disclose it in writing to Beneficiary and Depositor.

8.2 Entire Agreement. This Agreement, which includes Exhibits described herein, embodies the entire understanding among the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. Escrow Agent is not a party to the Contract between Depositor and Beneficiary and has no knowledge of any of the terms or provisions of the Contract

except for Article 19 of the Contract regarding Dispute Resolution which Escrow Agent acknowledges having received. Escrow Agent's only obligations to Depositor or Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the Parties, except that Attachment A need not be signed by Beneficiary and Attachment B need not be signed.

8.3 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Exhibit B. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

8.4 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Depositor and Beneficiary; and Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Escrow Agent receives unambiguous and authoritative written evidence of the change of Parties.

8.6 Regulations. Depositor and Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Source Code may be delivered in accordance with the provisions of this Agreement.

8.7 Liability. No member, officer, or employee of Beneficiary, Depositor or Escrow Agent shall be liable personally hereunder or by reason hereof.

8.8 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which, when executed, shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement.

[signatures on next page]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Source Code Escrow Agreement as of the date first written above.

Depositor

TEXAS DEPARTMENT OF
TRANSPORTATION
Beneficiary

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Escrow Agent

By: _____
Name: _____
Title: _____
Date: _____

DRAFT

ATTACHMENT A

DESCRIPTION OF ESCROWED MATERIAL

Depositor Company Name _____

Account Number _____

Product Name _____ Version _____

(Product Name will appear as the Exhibit A Name on Account History report)

Owner of Product _____

(Name, address, tel. no., e-mail address)

SOURCE CODE DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape _____mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

PRODUCT DESCRIPTION:

Environment _____

SOURCE CODE INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

I certify for **Depositor** that the above described **Escrow Agent** has inspected and accepted Source Code have been transmitted to _____: _____ the above materials (*any exceptions are*

noted above):

Signature _____
Print Name _____
Date _____

Signature _____
Print Name _____
Date Accepted _____
Exhibit A# _____

Send materials to: Escrow Agent, _____,
_____ (____) ____-____

DRAFT

ATTACHMENT B

DESIGNATED CONTACT

Account Number _____

Notices, deposit material returns and communications to Depositor should be addressed to:

Invoices to Depositor pursuant to Section 4.4(a) should be addressed to:

Company Name: _____

Address: _____

Designated Contact: _____ Contact: _____

Telephone: (____) ____ - ____ E-mail: _____

Facsimile: (____) ____ - ____

E-mail: _____

Verification Contact: _____

Notices and communications to Beneficiary should be addressed to:

Invoices to Beneficiary should be addressed to:

Company Name: _____

Address: _____

Designated Contact: _____ Contact: _____

Telephone: _____

Facsimile: _____

E-mail: _____

P.O.#, if required: _____

E-mail: _____

Requests from Depositor or Beneficiary to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor or Beneficiary.

Contracts, Source Code, notices, invoice inquiries and fee remittances to Escrow Agent should be addressed to:

Telephone: () -

Facsimile: () -

E-mail: _____

Date: _____

DRAFT

EXHIBIT X

KEY PERSONNEL*

- (a) Program manager
- (b) System design manager*
- (c) Installation manager*
- (d) System test manager*
- (f) Maintenance manager
- (g) Transition manager*
- (h) Quality manager

* Note: Asterisk denotes other Key Personnel positions for which liquidated damages may be due pursuant to Section 7.4.5 of the Agreement.

Note that initial designations in Proposal apply to Work under the Initial NTP. Refer to Section 7.4.5 for permissible changes in Key Personnel for subsequent Project Segments.

EXHIBIT Y

METHODOLOGY FOR DETERMINING LIQUIDATED DAMAGES

Liquidated Damages amount per day shall be calculated with reference to TxDOT's most current traffic and revenue study/data for the applicable Project Segment as the difference between projected annual gross revenue and projected annual operations costs, divided by the number of revenue days per year used in the study/data, plus a \$3,000.00 per day facility service cost (which is intended to cover TxDOT's anticipated additional internal overhead and administrative costs, as well as anticipated additional outside consultant costs):

$$\frac{[(\text{Projected annual gross revenue} - \text{projected annual operations costs}) / \text{revenue days per year}] + \$3,000.00}{}$$