EXHIBIT A

ABBREVIATIONS AND DEFINITIONS

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

CDA	Comprehensive Development Agreement
CDP	Conceptual Development Plan
CFP	Conceptual Financial Plan
CFR	Code of Federal Regulations
CPM	Critical Path Method
DBE	Disadvantaged Business Enterprise
DBELO	DBE Liaison Officer
DOT	U.S. Department of Transportation
EIS	Environmental Impact Statement
FASB	Financial Accounting Standards Board
FHWA	Federal Highway Administration
FIP	Facility Implementation Plan
FONSI	Finding of No Significant Impact
GAAP	Generally Accepted Accounting Principles
HUB	Historically Underutilized Business
ISOW	Initial Scope of Work
MDP	Master Development Plan
MFP	Master Financial Plan
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act
NTP	Notice to Proceed
PQS	Competing Proposal and Qualifications Submittal
QA/QC	Quality Assurance / Quality Control
RFP	Request for Detailed Proposals
RFQ	Request for Proposals and Qualifications
RID	Reference Information Documents
RMA	Regional Mobility Authority
ROD	Record of Decision
ROW	Right of Way
SEC	Securities Exchange Commission
TxDOT	Texas Department of Transportation

USDOT U.S. Department of Transportation
WBS Work Breakdown Structure

DEFINITIONS

Key definitions in the Agreement are as follows:

Act has the meaning set forth in Recital A of the Agreement.

Affiliate(s) means (i) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Developer or any of its members, partners or shareholders holding a 10% or greater interest in the Developer; and (ii) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (a) the Developer, (b) any of Developer's members, partners or 10% or greater shareholders or (c) any Affiliate of the Developer under part (i) 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. Any Work performed by Affiliates shall be deemed performed by the Developer's own organization.

Agreement means the Comprehensive Development Agreement, to which this Exhibit A is attached, executed by TxDOT and the Developer, including any and all amendments thereto.

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

Buy America means the Buy America Act as set forth in the CFR.

CDA Segments mean Segments 2, 3a, 3b, 3c and 4 of the North Tarrant Express Project, as described herein, including any adjacent or interconnected facilities needed for mobility, interconnectivity and financing. It does not include Segment 1, which will be developed through the Concession CDA executed concurrently with this Agreement. Segment 2 consists of SH183 from the interface with Segment 1 in the vicinity of the interchange with IH820 west to the interchange with SH161 (approximately 11.3 miles). Segment 3A consists of IH35W from the interface with Segment 1 south of the IH820 interchange south to the IH30 interchange (approximately 6.5 miles). Segment 3B consists of IH35W from the interface with Segment 1 north of the IH820 interchange north to the interchange with US81/287 (approximately 3.3 miles). Segment 3C consists of IH35W from the interface with Segment 3B at the US81/287 interchange north to the SH170 interchange (approximately 5 miles). Segment 4 consists of IH820 from the interchange with SH121N/SH183 south to the Randol Mill Road interchange north of the IH820/IH30

interchange (approximately 3.7 miles). The alignment and limits of Segments 3A, 3B, 3C and 4 will be determined through the environmental process.

Certificate of Facility Implementation Plan Completion: means the certificate issued to the Developer by TxDOT pursuant to Section 8.4.2 of the Agreement upon completion of all Facility Development Work for a particular Facility.

Change in Law means the enactment, adoption, modification, repeal or other change in any Law that (a) occurs after the Proposal Date with respect to the Initial Scope of Work and Update Work and that occurs after approval of the Facility Implementation Plan for a Facility with respect to Facility Development Work for that Facility, including any change in the judicial or administrative interpretation of any Law, or adoption of any new Law, and (b) is materially inconsistent with Laws in effect on the Proposal Date or date of approval of the Facility Implementation Plan, as applicable, excluding, however, any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Date or date of approval of the Facility Implementation Plan, as applicable.

Change of Control means any direct or indirect change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business by a shareholder, member, partner or joint venture member of Developer. Notwithstanding the foregoing, an upstream reorganization or transfer of direct or indirect interests in Developer shall not constitute a Change of Control, so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer.

Close of Finance means commitment and/or issuance of TxDOT funds and/or any other funds necessary to finance the acquisition, design, construction, operations and maintenance of a Facility.

Code has the meaning set forth in Recital A of the Agreement.

Commission means the Texas Transportation Commission.

Conceptual Development Plan means the Developer's Conceptual Development Plan included in the Proposal, as set forth in Exhibit B to the Agreement.

Conceptual Financial Plan means the Developer's Conceptual Financial Plan included in the Proposal, as set forth in Exhibit C to the Agreement.

Concession CDA means the Comprehensive Development Agreement for a concession relating to the North Tarrant Express Concession Facility, including Segment 1 [and ___]. *[To be conformed prior to CDA Execution]*

Contract Documents means this Agreement and all Exhibits thereto, the Master Development Plan, the Master Financial Plan, the Project Management Plan, each

Facility Implementation Plan, and all updates, amendments and supplements to any such documents. Facility Agreements are not Contract Documents.

Critical Path means the schedule path with the least amount of total float which constitutes the longest continuous sequence of interrelated activities depicting Work from an NTP to completion of a final or designated intermediate Milestone.

Critical Path Method means a method for planning, scheduling, and progress reporting of Work to be performed that tracks all activities on a Critical Path.

DBE/HUB Performance Plan means, with respect to each Facility, the plan to be prepared by Developer pursuant to Section 13.1.2 of the Agreement.

DBE Program means the program designed by TxDOT for federally assisted projects, as set forth in Exhibit K to the Agreement.

DBE Rules has the meaning set forth in Section 13.1.1 of the Agreement.

DBE Special Provisions has the meaning set forth in Exhibit K to the Agreement.

Deliverables means the Master Development Plan, the Master Financial Plan, the Project Management Plan, and such other plans, drawings, samples, lists, manuals, schedules, surveys, reports, programs, data, and other documents, information and items, whether in draft, revised or final form, required under the terms of the Agreement or other Contract Documents to be submitted to TxDOT in accomplishing the Work.

Developer means the party identified as the "Developer" in the introductory paragraph of the Agreement.

Developer Milestone means each interim milestone between Project Milestones either: (i) set forth in Section J1.3 of Exhibit J to the Agreement, or (ii) set by the Developer within the Project Schedule and approved by TxDOT.

Developer-Related Entities means (i) Developer, (ii) partners, joint venturers and/or members in or with Developer, (iii) Affiliates party to a Facility Implementation Plan, (iv) Subcontractors, (v) the employees, agents, officers and directors of the foregoing (vi) any other Persons performing any of the Initial Scope of Work or other work to be performed by Developer, and (vii) any other Persons for whom Developer may be legally or contractually responsible.

Disadvantaged Business Enterprise (DBE) or **DBE** means a business entity qualifying as a Disadvantaged Business Enterprise under applicable Law.

Disadvantaged Business Enterprise (DBE) Program means the program set forth in Exhibit K to the Agreement.

Dispute means any dispute, claim, cause of action, contention or disagreement between the Developer and TxDOT arising under, out of or concerning the Contract Documents, the Work or payment, performance or failure to pay or perform under the Contract Documents.

Dispute Resolution Procedures means the dispute resolution procedures set forth in Exhibit M to this agreement.

Equal Employment Opportunity means the non-discrimination provisions set forth in Section 13.2 of the Agreement.

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

Event of Default means one of the events identified in Section 21.1 of the Agreement.

Facility means each separate facility developed within the CDA Segments as part of the Project, including the development of managed lanes, additional general purpose lanes, frontage roads and other components as needed for connectivity, mobility and financing.

Facility Agreements means the agreement or agreements to be entered into by TxDOT, the Developer and/or Developer's Affiliates pursuant to a Facility Implementation Plan for the acquisition, design, permitting, construction, operations, maintenance, financing and other services and work necessary to deliver and operate an individual Facility, after Close of Finance for the Facility, including coordination and cooperation between Facilities, and including amendments thereto. The term "Facility Agreement" specifically excludes Facility Implementation Plans.

Facility Development Work means Developer's scope of work under a Facility Implementation Plan for each Facility through the Close of Finance, which shall include all services necessary for achieving the Close of Finance, except to the extent the approved Facility Implementation Plan places responsibility for any service on TxDOT or another party.

Facility Financial Plan means the detailed plan for financing a Facility, prepared by the Developer and approved by TxDOT, as amended from time to time and as more particularly described in Section 8.3 of the Agreement.

Facility Implementation Plan means a plan for the development of a Facility, including all services, efforts and activities necessary to achieve Close of Finance for the Facility, prepared by the Developer and approved by TxDOT, as amended from time to time and as more particularly described in Section 7.5 of the Agreement.

Facility Milestone means one or more milestones for a specific Facility as set forth in the Project Schedule or any Facility Schedule.

Facility NTP1 means the notice to proceed with preparation of a Facility Implementation Plan for a Facility, to be issued by TxDOT, as more particularly described in Section 7.1.1 of the Agreement.

Facility NTP2 means the notice to proceed with Facility Development Work for a Facility, to be issued by TxDOT, as more particularly described in Section 8.1.4 of the Agreement.

Facility NTP3 means the notice to proceed with a Close of Finance for a Facility, to be issued by TxDOT, as more particularly described in Section 8.4.1 of the Agreement.

Facility Schedule means any schedule prepared by the Developer and approved by TxDOT for preparing or carrying out a Facility Implementation Plan, including a schedule for work to be performed pursuant to a Facility Agreement.

Facility Work means all Work under the Contract Documents that is performed (i) to determine whether a Facility is Ready for Development, (ii) in connection with the preparation and approval of Facility Implementation Plans, or (iii) performed pursuant to Facility Implementation Plans. The term "Facility Work" specifically excludes the Initial Scope of Work, Update Work and Technical Support Services.

Federal Acquisition Regulation means Title 48 of the United States Code of Federal Regulations.

Financially Responsible Entity has the meaning set forth in Section 15.1 of the Agreement.

Governmental Approval means any permit, license, consent, authorization, waiver, variance or other approval, guidance, mitigation agreement, or memorandum 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, required for the performance of the Initial Scope of Work and other work to be performed by Developer or otherwise required in connection with the Project or any Facility, in whole or in part.

Governmental Entity means 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.

Guarantor means the entity that issued a Guaranty.

Guaranty means the document executed by a Guarantor to guarantee the payment and performance of all obligations of the Developer under the Contract Documents, as may be required by the RFP or Contract Documents.

Hazardous Materials means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. "Hazardous Materials" includes the following:

(a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", 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);

(b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

(h) Any radon or radon gas;

(i) Any methane gas or similar gaseous materials;

(j) Any urea formaldehyde foam insulation;

(k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(l) Pesticides;

(m) 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; and

(n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

HUB Program means the program designed by TxDOT for utilization of HUBs.

Indemnified Party means TxDOT, the State, the Commission, and their respective agents, employees, representatives, successors and assigns.

Initial Scope of Work means the Work under the Contract Documents through completion and approval of the initial Master Development Plan, including, but not limited to, the Deliverables set forth in Exhibit H, as more particularly described in Exhibit J to the Agreement. The term "Initial Scope of Work" specifically excludes any Technical Support Services, Update Work or Facility Work.

Interpretive Decision means an interpretation provided by TxDOT to clarify an uncertain or ambiguous requirement of the Contract Documents as more particularly described in Section 12.2 of the Agreement.

Small Business Mentoring Program means a program for Facility Development Work and work under Facility Agreements between TxDOT and the Developer or an Affiliate that attracts, promotes and retains individuals, including minorities and women, and companies that are historically underutilized, as described in Exhibit F.

Key Personnel means the individuals employed by the Developer to fill the key job categories for the Initial Scope of Work and as identified in the Project Management Plan and Master Development Plan.

Law or **Laws** means any statute, law, regulaton, 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 the Project, the Initial Scope of Work and/or other work to be performed by Developer, whether now or hereafter in effect.

Losses means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants', and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other

provision of the Agreement)), fee charge, judgment, penalty, fine or third party claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Major Catastrophe means a sudden, unexpected event or occurrence beyond the control of TxDOT and the Developer that has adverse effects upon the general public or a significant segment thereof, such as but not limited to a hurricane, earthquake, general power outage or other event or circumstance of similar scale and magnitude at the Project site.

Major Subcontract means any Subcontract with a Major Subcontractor.

Major Subcontractor means any Subcontractor that has primary responsibility, with respect to the Project or any Facility, for: (i) design and engineering services, (ii) architectural services, (iii) environmental support services, (iv) services as an independent engineer, (v) geotechnical investigation, (vi) surveying, (vii) traffic or ridership and revenue studies, (viii) right-of-way acquisition services, (ix) provision of, or services related to, toll or fare collection equipment, (x) provision of, or services related to, vehicles or systems, (xi) utility engineering, or (xii) financial advisory services.

Management Plan means any of the management plans or components of the Project Management Plan listed in Exhibit F to the Agreement.

Master Development Plan means the master plan for the Project prepared by the Developer and approved by TxDOT, as amended from time to time and as more particularly described in Section 5.3.1 of the Agreement. The Master Development Plan includes the Master Financial Plan and the Project Schedule.

Master Financial Plan means the a master plan for financing the Project and each Facility, prepared by the Developer and approved by TxDOT, as amended from time to time and as more particularly described in Section 5.3.2 of the Agreement. The Master Financial Plan will be included in the Master Development Plan.

Milestone or milestone means a Project Milestone, a Facility Milestone or a Developer Milestone.

Milestone 1 means the first milestone in the Initial Scope of Work, as set forth in Exhibit J to the Agreement.

Notice to Proceed shall mean Project NTP1, Project NTP2, Facility NTP1, Facility NTP2 and Facility NTP3, as appropriate.

Open Book Basis means allowing TxDOT to review all underlying assumptions and data associated with pricing and financial and business terms, as reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

Party means TxDOT or Developer, as applicable.

Person means any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity.

Professional Services means all work to be performed under the Agreement that requires professional licenses, including the following services and work: (i) design and engineering; (ii) right of way acquisition services; (iii) surveying; (iv) utility adjustment design; and (v) environmental permitting and compliance services.

Project means all Facilities that are ultimately developed under Contract Documents, including the approved Master Development Plan.

Project Management Plan (PMP) means the plan or plans, including Management Plans, to be prepared by the Developer addressing how Key Personnel and the Developer's organization will manage the respective phases of the Project as described in Section 5.5 of the Agreement.

Project Milestone means each of the milestones for completing Work on the Project set forth in Exhibit J to the Agreement.

Project NTP1 means a written notice issued by TxDOT to Developer authorizing the Developer to prepare the schedule for the Initial Scope of Work, Project Management Plan and Quality Management Plan as set forth in Section 5.1.1 of the Agreement.

Project NTP2 means a written notice issued by TxDOT to Developer authorizing the Developer to proceed with the portions of the Initial Scope of Work not already authorized by Project NTP1 as set forth in Section 5.1.2 of the Agreement.

Project Schedule means the master schedule for the performance of the Developer's Work on the Project, to be included in the Master Development Plan, as more particularly described in Exhibit G to the Agreement.

Proposal means the proposal submitted on **[___________]** by Developer to TxDOT in response to the RFP, including any clarications thereto between submission of the proposal and execution of the Agreement.

Public Information Act means Chapter 552 of theTexas Government Code, as amended.

Quality Management Plan means the component of the Project Management Plan to be prepared by the Developer addressing the procedures and methodology the Developer will use to manage the Project quality system and ensure that all subcontractors and suppliers involved in the Project are integrated into the Developer's quality management system as described in Exhibit F to this Agreement.

Ready for Development means that factors and conditions in the present and reasonably foreseeable marketplace, including environmental factors, transportation

demand and financial markets, and the political environment, appear to be conducive to proceeding with planning, permitting, design and other efforts to prepare a Facility for Close of Finance, construction and operation. It is anticipated that a Facility can be Ready for Development even though the duration of time to Close of Finance may be significant; and the parties recognize that after a Facility is found Ready for Development intervening changes in circumstances could occur that inhibit or delay Close of Finance. Unless otherwise approved by TxDOT in its sole discretion, a proposed toll Facility located within the boundaries of any local toll project entity shall not be considered Ready for Development unless and until all conditions for TxDOT's development of the Facility as a toll project set forth in applicable Laws have been satisfied.

Recovery Schedule means the schedule to recover schedule delays that the Developer is required to prepare under Section 10.6 of the Agreement and Exhibit G to the Agreement.

Reference Information Documents or **RID** means those documents listed in to the Agreement and identified as Reference Information Documents. Except as expressly provided in the Contract Documents, the Reference Information Documents are not considered Contract Documents and were provided to Developer for informational purposes only and without representation or warranty by TxDOT.

Reporting Entity has the meaning set forth in Section 23.1.2 of the Agreement.

Request for Proposals or **RFP** means the Request for Proposals issued by TxDOT on April 4, 2006 with respect to the Project, including all attachments thereto and any subsequent addenda.

Risk Event means certain events which will result in delay in the achievement of identified work or milestones, as identified on the Risk Events Matrix attached as Exhibit L to the Agreement.

Risk Events Matrix means the matrix of events and remedies should such events occur set forth in Exhibit L to the Agreement.

Rules has the meaning set forth in Recital C of the Agreement.

Schedule means any of the schedules for the Initial Scope of Work, the Project Schedule or any Facility Schedule, as amended from time to time.

Schedule Update means each monthly update to the Schedules prepared by Developer in accordance with paragraph 1.4.B of Exhibit G to the Agreement.

Self-performance or self-performed means any Facility-related work or services to be performed pursuant to a Facility Agreement to which Developer or any Developer Affiliate is a party.

State means the State of Texas.

Subcontract means any subcontract by Developer with any other Person 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, at all tiers.

Subcontractor means any Person with whom Developer or an Affiliate of Developer has entered into any Subcontract, and any other Person with whom any Subcontractor has further subcontracted any part of the Initial Scope of Work or other Work to be performed by Developer under the Contract Documents, at all tiers.

Subcontractor Dispute means a dispute between the Developer and a Subcontractor as more particularly described in Section 22.3 of the Agreement.

Tangible Net Assets means net assets less intangibles in accoradance with GAAP.

Technical Provisions means TxDOT's technical provisions for concession CDAs entitled "Programmatic Comprehensive Development Agreement - Book 3" or TxDOT's technical provisions for design-build CDAs entitled "Programmatic Comprehensive Development Agreement (Design-Build) – Book 3," as applicable. References to the Technical Provisions shall mean the most recent version of the applicable programmatic document.

Technical Support Services means engineering, technical and support services for the NEPA process for each Facility expressly authorized by TxDOT in accordance with Exhibit I or the Master Development Plan, as applicable..

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

Uniform Relocation Assistance Act means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, Apr. 2, 1987, 101 Stat. 132), as amended.

Unsolicited Proposal means an "unsolicited proposal" as that term is used in section 27.5 of the Rules and only includes proposals from private entities for development of a facility or improvement that TxDOT is legally authorized to develop.

Update Work means all Work under the Contract Documents, except Work that is part of the Initial Scope of Work, Technical Support Services or Facility Work, including but not limited to: (i) preparing updates to and revisions of the approved Master Development Plan, Master Financial Plan and Project Management Plan; (ii) provision of insurance, as more particularly set forth in Section 16.2.3, and (iii) provision of security, if any, pursuant to Section 15.

Work means all work, services and activities to be performed, furnished, provided or undertaken by or on behalf of Developer under the Contract Documents.

[END OF DEFINITIONS]

EXHIBIT B

CONCEPTUAL DEVELOPMENT PLAN

[To Be Attached from Proposal]

EXHIBIT C

CONCEPTUAL FINANCIAL PLAN

[To Be Attached from Proposal]

EXHIBIT D

MASTER DEVELOPMENT PLAN REQUIREMENTS

The Master Development Plan shall:

A. Identify key parameters and assumptions utilized by Developer in preparing the Master Development Plan, including:

   i. Demographics – growth in population, employment (basic, retail, and service), housing, per-capita income, age and ethnic distribution;

   ii. Trends in the growth and strength of federal and state fiscal status and budget, especially as they affect transportation funding and expenditures;

   iii. Social and urbanization trends affecting the level and affordability of user charges;

   iv. Economic development related to i) localized impacts to Facility implementation and ii) the existing urbanized areas; and

   v. The alignment of Project plans with state and federal policy on global climate change and air quality, and in particular the emission of greenhouse gases arising from transportation in the region.

B. Address the anticipated effects, impact and implications of the parameters and assumptions identified in Item A (i through iv) above in carrying out the Master Development Plan.

C. Identify the level and scope of the Developer's participation with TxDOT in coordination with MPOs, FEMA, US DOT and all public and private entities.

D. Identify a list of Facilities and describe the characteristics of each identified Facility (i.e., capacity, interconnections, preliminary alignment, number and/or width of lanes) during the term of the Agreement.

E. For all roadway Facilities, for all CDA Segments, provide traffic and revenue forecasts. These traffic and revenue forecasts shall be of sufficient detail to support the overall long term sequencing of Facilities and revenue generation streams. These traffic and revenue forecasts shall be based on industry-accepted travel demand models:

   i. Coordinate all travel demand modeling, forecasts and assumptions with ongoing TxDOT forecasting and modeling efforts, including but not limited to the use of the Texas Statewide Analysis Model (SAM) and/or other TxDOT and regional traffic forecasting models;

ii. Provide daily and annualized passenger auto and truck roadway traffic forecasts, including methodology and assumptions for user charges and diversion rates and produce revenue generation stream analyses for the Project; and

iii. Provide a plan for tolling roadway Facilities, showing assumptions with respect to rates, tolling technologies, toll collection locations, and other factors influencing traffic and revenue forecasts.

F. For each Facility, identify connectivity/interconnections among the Facilities and with existing and planned transportation infrastructure in the Project area over the term of the Agreement.

G. Include preliminary design (diagrammatics) for each Facility. Minimum detail shall include:

i. Identification of innovative techniques or technologies, including assumptions;

ii. Preliminary drawings necessary to estimate cost (scale shall be 1” = 200’);

iii. Preliminary horizontal and vertical geometrics;

iv. Preliminary right-of-way requirements;

v. Access management plans;

vi. Typical section drawings (including section thickness) (11” x 17” format);

vii. Preliminary hydrologic/hydraulic studies necessary to support diagrammatic development;

viii. Location of major structures including bridges and interchanges; and

ix. Location of existing utilities. . Perform Quality Level D subsurface utility engineering investigation as defined by *Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data* (CI/ASCE 38-02). Utility locations shall be referenced to established survey control provided by TxDOT and the following minimum requirements shall be met.

i. Compile "As Built" information from plans, plats and other location data as provided by the utility owners.

ii. Coordinate with utility owner when utility owner's policy is to designate their own facilities at no cost for preliminary survey purposes. Developer shall examine utility owner’s work to ensure accuracy and completeness.

iii. Designate, record, and mark the horizontal location of the existing utility facilities and their service laterals to existing buildings using non-destructive surface geophysical techniques. No storm sewer facilities are to be designated unless authorized by TxDOT. A non-water base paint, utilizing the American Public Works Association "APWA" color code scheme, must be used on all surface markings of underground utilities.

iv. Correlate utility owner records with designating data and resolve discrepancies using professional judgment. A color-coded composite utility facility plan with utility owner names, quality levels, line sizes and subsurface utility locate (test hole) locations, if applicable will be prepared and delivered to TxDOT. It is understood by both the Developer and TxDOT that the line sizes of designated utility facilities detailed on the deliverable are from the best available records and that an actual line size is normally determined from a test hole vacuum excavation. A note must be placed on the designate deliverable that states "lines sizes are from best available records". All above ground appurtenance locations must be included in the deliverable to TxDOT. The information must be provided in a format compatible with the current CADD system used by TxDOT. The electronic file will be delivered on CD or as required by TxDOT. A hard copy is required and must be sealed and dated by a Professional Engineer registered in Texas. When requested by TxDOT, the designated utility information must be overlaid on the design plans using the datum and format specified by TxDOT.

v. Determine and inform TxDOT of the approximate utility depths at critical locations as determined by TxDOT. This depth indication is understood by both the Developer and TxDOT to be approximate only and is not intended to be used in preparing the right of way and construction plans.

vi. Close-out permits as required.

vii. Clearly identify all utilities that were discovered from quality levels greater than Level D investigation, if such investigation was performed. These utilities must have a unique line style and symbology in the designate (Quality Level D) deliverable.

H. For each Facility provide preliminary estimates of probable Facility costs, including anticipated Developer and TxDOT costs, and, consistent with applicable provisions of the Agreement, the sources of payment or financing for the related costs from the planning stages to completion of each of the following items:

i. Pre-development and Facility feasibility (all anticipated costs to be incurred prior to executing a Facility Agreement), such as:

   1. Planning;
   2. Environmental mitigation;
   3. Technical and financial feasibility studies;
   4. Transaction advisory services (legal, investment banking, financial advice, risk analysis, preparation of procurement documents);

ii. Administration and overhead;

iii. Contract administration, including oversight consultants and the independent engineer;

iv. Design and engineering;

v. Right-of-way (survey, appraisal, acquisition services and acquisition costs);

vi. Construction, including (a) civil infrastructure and fixed facilities such as roadways, structures, drainage, earthwork, utilities, signage, toll plazas, and other major auxiliary facilities identified for the Facility, and (b) operating systems, technology and software;

vii. Operations;

   1. Administration and overhead, including the independent engineer;
   2. Revenue and user fee collection systems and technologies;
   3. Enforcement;
   4. Safety;
   5. Security;
   6. Public relations and customer service;
   7. Appropriate operating reserves;

viii. Maintenance detail for:

   1. Routine maintenance of structures, roadway, etc;

2. Periodic maintenance such as pavement overlays, equipment replacement and other preventive work;

3. Reconstruction as necessary during the term of the Agreement;

4. Appropriate maintenance and capital replacement reserves;

ix. Expansion of capacity and other new capital improvements;

x. Major systems and equipment supply;

xi. Financing and related costs;

I. For each Facility:

i. Identify planned TxDOT and other public and private entity projects that will potentially impact (positively and negatively) the Facility;

ii. Describe how these other projects will be accommodated and incorporated with the Facility during their respective development phases and after their completion;

J. Identify project right-of-way needs for the Project;

i. Describe approach to right-of-way acquisition, including appraisal, offer, negotiation, eminent domain, relocation assistance, etc., and coordination with TxDOT and all other relevant entities;

ii. Identify corridor preservation techniques;

iii. Identify any innovative financing arrangements, including commercial development, concessions, and purchase and lease-back agreements; and

iv. Identify major easements such as drainage, utility, and access.

K. Provide phasing, sequencing, and prioritization of all Facilities.

L. Provide a schedule of development for each Facility. For each Facility, provide phasing and sequencing for interim build out and ultimate build out including number and width of lanes. If build out is to be phased, describe the phasing parameters. Minimum schedule detail shall include:

i. Submission of Facility Implementation Plan request (notice that a Facility is Ready for Development);

ii. Agreement that Facility is Ready for Development;

iii. Approval of Facility Implementation Plan;

iv. Execution of Facility Agreements;

v. Close of Finance, plan of finance, and completion of funding;

vi. NTP for design and construction;

vii. Substantial Completion; and

viii. Commencement of operations and maintenance phases.

M. For each Facility, identify the plan for obtaining any outstanding Governmental Approvals;

N. For each Facility, identify a plan for complying with the mitigation and environmental requirements of Governmental Approvals;

O. For each Facility, identify revenue generation, collection technology, and plans, including but not limited to:

i. Revenue collection strategy and structures;

ii. Administration, management, and processing procedures; and

iii. Interoperability with existing and future Facilities and other existing and planned transportation infrastructure in the State.

P. For each Facility, include a conceptual operation and maintenance management plan that, at a minimum, addresses:

i. Life-cycle maintenance costs;

ii. Major maintenance requirements;

iii. Hand-back standards and procedures;

iv. Operations and maintenance reserve requirements;

v. Operational and maintenance-related environmental requirements set forth in Governmental Approvals.

Q. For each Facility, identify and suggest strategies for allocating, managing, and mitigating Facility-specific risks (including potential risks to the overall Project). Include a detailed risk matrix for each Facility, which shall, at a minimum:

i. Identify Facility-specific risks (other than those listed in the Risk Events Matrix) such as capacity, planning, design, construction, completion,

operation, maintenance, demand, inflation financing, legislative, policy, technology, and residual value;

ii. Quantify the financial consequences of key risks ;

iii. Estimate the probability/likelihood of risks;

iv. Include a risk sensitivity analysis;

v. Include a proposed or desired allocation of risk as among TxDOT, Developer and third parties; and

vi. Suggest risk-mitigation strategies to eliminate, mitigate, or reduce specific risks.

R. For each Facility, identify the major anticipated third party agreements and arrangements (including the relevant parties and types of arrangements and agreements) and provide a schedule and sequencing of such agreements and arrangements, addressing at a minimum:

i. railroads;

ii. Utility providers;

iii. Municipal and regional authorities, and state entities and agencies; and

iv. Land owners and developers.

S. Provide a detailed work plan for updating the Master Development Plan, including, at a minimum reevaluations, material changes in the Master Financial Plan, material changes in highway and rail usage demand or other requirements, procurement (or failure to procure) major environmental, planning or permitting approvals, material MPO information and STIP submissions, material changes or characteristics of a Facility, material changes to the UTP, material changes in local government requirements and needs, and material changes in the regional or national economy, demographic patterns and trends, and political concerns; and provide the anticipated compensation methodology and process for how the Developer will be compensated for performing Update Work.

T. To the extent not already set forth on Exhibit I, identify the anticipated terms, conditions and scope, compensation, and the methodology and process for how the Developer will be compensated, for performing Technical Support Services.

U. Identify how the Project and Facilities can be developed and operated in ways that positively affect air quality and minimize greenhouse gases.

V. Develop and execute geotechnical investigation plan to evaluate soil conditions along the Project. At a minimum, Developer shall:

i. Develop a geotechnical structures boring plan that includes two borings (one at each side of the roadway crossed) for overpass/underpass bridges and four borings (one at each quadrant) for direct connector interchanges. Each boring shall be terminated at refusal.

ii. Develop a geotechnical pavement boring plan that includes one boring every 2500 feet of proposed pavement. Each boring shall be to a depth of 20 feet or to refusal is encountered.

iii. Texas cone penetration tests (Tex-132-E) shall be conducted at five-foot intervals over the full depth of the borings.

iv. Take relatively undisturbed push-tube samples (approximately 2.8" diameter), in as much as possible, in a continuous manner over the top 20 feet of each boring and then intermittently as needed to competently log the materials. Coring using NX-size or larger core barrels may be used as needed to obtain samples for identification of the various layers. All samples shall be properly labeled as to boring number and depth interval, and shall be wrapped in plastic sheeting or aluminum foil in a manner to prevent drying. All samples shall be placed in core boxes in a systematic order, and each core box labeled accordingly. The drill crew shall have a geologist or geotechnical engineer who is familiar with TxDOT logging procedures contained in the TxDOT Geotechnical Manual. The logger shall maintain a field log with all Texas cone penetration test results, material descriptions, ground water observations, and other observations pertinent to the boring. The final boring logs shall be completed using the TxDOT WinCore log system.

v. Observe each boring during the drilling activities for any evidence of ground water. The boring logs shall clearly note the results of ground water observations. If water is used as a drilling aid, the depth at which it is introduced should be noted as part of the observations.

vi. Backfill each boring in a manner to prevent injury to the public. Determine also if there are local ground water districts or other regulations that require grouting with bentonite.

vii. Conduct Atterberg Limits and Gradation Tests (#4, #40, and #200 sieves) on samples recovered from the borings. A minimum of three sets of tests per boring shall be performed but additional sets of tests shall be performed to fully classify the soils based on Good Industry Practice. Most of these tests shall be taken from the upper 20 feet but some also from soils in the deeper layers. The Unified Soil Classification System shall be used for all soil classifications and descriptions on the final logs. All samples not used for

laboratory testing shall be retained by the Developer for a period of 10 years or until otherwise directed by TxDOT.

viii. Prepare a report containing the results of the field exploration and laboratory testing. This report shall contain the following:

a. A general site vicinity map showing the Project location, and more detailed drawings showing the specific boring locations.

b. A tabulation of the borings that includes the boring location, boring designation, horizontal location (coordinates), and elevation.

c. Boring logs using the TxDOT WinCore log system and including the horizontal coordinates, ground surface elevation, Texas cone penetration tests, laboratory tests, material descriptions, and ground water observations.

d. A summary of all laboratory test results by boring location and including sample depth interval, liquid limit, plastic limit, plasticity index, percent passing #4, #40, and #200 sieves, and Unified Soil Classification and description.

ix. Survey final boring locations to a level accuracy equal or greater than ± 1.0 feet horizontally and ± 0.5 feet vertically.

W. Provide all other elements described in the Agreement.

EXHIBIT E

MASTER FINANCIAL PLAN REQUIREMENTS

The Master Financial Plan, to be included in and as part of the Master Development Plan, shall:

A. For the Project, provide a plan of finance which includes, at a minimum:

   i. On an annualized basis, the finance sources and the level of contribution, value, or in-kind support, equity, public and/or private financing or other funding from public and private sources based on the comprehensive financial models required in paragraph B below, and

   ii. Assumptions used in developing the conceptual plan of finance. .

B. For each Facility, include a comprehensive, integrated financial model and pro-forma analysis that is reflective of the traffic and revenue, capital and operating costs developed in the Master Development Plan and includes, at a minimum, the following elements:

   i. All material financial assumptions used in developing the model and analysis, including, at a minimum:

      a) Escalation rates for tolls and costs,

      b) Discount rate to be used for NPV, and similar computations, and

      c) 2009 as the initial base year,

      d) Near- and long-term assumptions with respect to the growth rate of revenues and costs,

   ii. Debt structure, including senior and subordinate debt at all tiers, and types of debt instruments,

   iii. Sources and uses of funds tables,

   iv. Cash flow analysis on an annual basis,

   v. Balance sheet,

   vi. Income statement,

   vii. Initial capital requirements,

   viii. Capitalized interest and reserve requirements,

ix. Operations and maintenance requirements, including reserve requirements,

x. Additional funding requirements for toll or fare stabilization fund or any regional policy, such as an HOV discount, if any,

xi. Reserve requirements for capital expansion, rehabilitation and replacement during the project life of the Facility,

xii. Revenue sharing and reinvestment assumptions,

xiii. Pledge and collateral requirements,

xiv. Issuing and closing fees and costs, including underwriting fees, bonds insurance, legal, and other consultant fees,

xv. On an annualized basis, identify finance sources and the level of contribution, value, or in-kind support, equity, public and/or private financing, or other funding from public and private sources, and

xvi. A projection of the mix or portion of financing proceeds to be used for funding:

a) From public sources,

b) From private sources,

c) From revenues generated from the operation of the facility.

xvii. Details on strategy for financing capital cost overruns to complete Facility,

C. For each Facility, identify the schedule and sequencing of the necessary steps to Close of Finance, if applicable, addressing at a minimum:

i. Completion of traffic and revenue studies,

ii. Completion of cost estimates,

iii. Procurement of bond insurance,

iv. Retention of financial analysts, including underwriters, investment bankers, bond counsel, and other relevant experts,

v. Completion of the underwriting and issuing process,

vi. Obtaining major U.S. rating agency letters and ratings,

vii. Obtaining public loans/guarantees (for example TIFIA credit assistance),

viii. Obtaining public finance from local, state and federal agencies,

ix. Securing TxDOT financial commitment, and

x. Advertising, marketing, and selling any bonds;

D. Include a detailed work plan to be used in keeping the Master Financial Plan consistent with the Master Development Plan and modified to reflect changes, updates, and iterations to the other. At a minimum, the work plan shall include the following:

i. Identification of events and occurrences that would trigger a requirement to update the Master Financial Plan at a time other than as set forth in the CDA or in the Risk Events Matrix, including material changes in the Master Development Plan, changes in interest rate climate, inflation rates, tax regulation, state or federal laws, climate for private investment, etc., and

ii. Identify the anticipated compensation and methodology and process for the how the Developer will be compensated for updating the Master Financial Plan; and

E. Provide all other elements described in the CDA.

EXHIBIT F

REQUIREMENTS FOR PROJECT MANAGEMENT PLAN AND QUALITYMANAGEMENT PLAN

1 THE PROJECT MANAGEMENT PLAN:

A. The Project Management Plan (PMP) shall describe the Developer's managerial approach and strategy, and give details on how the Developer plans to implement the Project and achieve the project requirements.

B. The PMP shall address how Key Personnel and the Developer's organization will manage the Project in the following areas, individually and collectively (but only to the extent the Developer or its affiliates are to perform such functions):

1. Planning (including all planning work under the CDA for the Project and each Facility prior to "Close of Finance");
2. Permitting;
3. Financing;
4. Right-of-way acquisition;
5. Design;
6. Construction;
7. Operation;
8. Maintenance;
9. Equipment and systems procurement;
10. Public liaison and community relations;
11. Government relations;
12. Coordinating with Utility Owners;
13. Environmental compliance (including management of the Developer's role and involvement in the NEPA process);
14. Contract administration;
15. TxDOT and OSHA health and safety compliance;
16. Quality management; and
17. Reaching Close of Finance/Facility Implementation.

C. The PMP shall clearly illustrate the Developer's capabilities to:

1. Control and coordinate its Subcontractors, financial and legal advisors, and Affiliates;
2. Interface and collaborate with TxDOT and its consultants;
3. interface with third parties as well as support public involvement and marketing;
4. Control costs and support the timely implementation of the Project including all Facilities;
5. Comply with applicable laws and regulations; and
6. Provide experienced personnel, offices and office equipment, project financial management and other controls, and related information systems required to successfully complete the Project; and
7. General management schedule for project offices and personnel during the term of the CDA.

The information presented in the PMP shall apply to all phases of work.

1.1 CONTENTS OF THE PMP

Table F-1 indicates minimum content of the PMP required from the Developer and each of the parties performing work or services for or on behalf of the Developer. The columns other than that labeled "**Developer**" apply only to the extent the Developer or its Affiliates are to perform such functions. Other Parties shall comply with the PMP requirements as they apply to the Work performed by such Other Parties. For this purpose, the term "**Other Parties**" means all Subcontractors of any tier whether or not employed directly by the Developer.

Table F-1 -- Contents of the PMP

	Description	Developer	Contractor Design	Contractor Construction	Operator
	The PMP shall include the following in the introduction:				
	• *Executive Summary;*				
	• *Purpose;*				
	• *Confidentiality Statement;*				
	• *Scope of Work; and*				
	• *Deliverables:*				
	The PMP shall provide details of:				
	a. Organizational structure covering the activities to be performed in accordance with the CDA and the lines of communication with other parties both on and off site;				
	b. Developer's main contractual arrangements and those of its Subcontractors including financial and legal advisers;				
	c. Responsibilities of Subcontractors and Affiliates in accordance with the CDA;				
	d. Names, titles, job roles, and specific experience required for the following Key Personnel:				
	• *Deputy Project Manager*				
	• *Preliminary design and feasibility manager*				
	• *Financial advisers*				
	e. Names and contact details of key personnel for Subcontractors and any third party with which the Developer will coordinate its activities with respect to the Project				
	f. A list of project specific management procedures and the methodology that will be followed to ensure effective management and implementation of the activities to be undertaken for all relevant technical aspects of the Project (excluding commercial, legal and financial aspects), indicating any amendments required to its standard practices;				
	g. Method statements for each major activity whether directly undertaken or subcontracted to include;				
	• *General approach to management*				
	• *Work breakdown structure and schedule*				
	• *Liaison with TxDOT and its consultants*				
	• *Resource allocation by task*				
	• *Contract administration system and*				
	• *Location of Work*				
	h. A logically linked timetable, supported by descriptions of the scope of work for each activity, including the estimation of work completed				
	i. Any other measures to demonstrate how the party will meet its project management obligations.				

	Description	Developer	Contractor Design	Contractor Construction	Operator
	The PMP shall detail the arrangements for:				
	j. Interfacing with the Developer's quality management system;				
	k. Direct reporting to the Developer by parties not immediately contracted to the Developer of any matter referred to in this Exhibit F;				
	l. External/internal communications procedures				
	m. Consultation with and taking due account of the views of competent authorities, and interested parties;				
	n. Liaison, document control, and reporting among the Developer, TxDOT, competent authorities and other interested parties, including arrangements that allow TxDOT to oversee activities;				
	o. Liaison with the public, press, media and similar parties in accordance with the press media policy of the TxDOT;				
	p. Providing information that may be required by TxDOT relative to statements or responses to questions or issues raised by or on behalf of the Governor or Governor's staff, State legislature or any member thereof or the Commission or any member thereof with respect to the Project or a Facility, and that is within the possession of the Developer or Affiliate or any of their respective directors, officers, employees, servants or agents;				

1.2 TXDOT AND DEVELOPER PLAN REVIEWS

TxDOT and the Developer shall meet regularly, and at least quarterly, to discuss the Developer's PMP and verify compliance with the criteria set out in this Exhibit F.

2 QUALITY MANAGEMENT PLAN

The Quality Management Plan shall meet the requirements of Section 2 of Exhibit F using generally accepted guidelines such as ISO 9000. The QMP shall:

A. Describe the Developer's quality management system and procedures for the Project, including preparation of the Master Development Plan and Master Financial Plan and subsequent Facility Implementation Plans.

B. Describe how the Developer's quality management system interrelates with other elements of the Developer's organization, and how the Developer will ensure all Subcontractors involved in the Project are integrated into the Developer's quality management system.

C. Integrate TxDOT into the quality management system, and enable TxDOT to monitor and measure the Developer's performance in the management, design, construction, operation, and maintenance of the Project and Facilities.

D. Set forth minimum standards, criteria and procedures for the preparation and content of management plans for each Facility for which the Developer or its Affiliates will perform any or all of design, construction, operations and maintenance.

E. Facility-specific quality management plans must also identify how the Developer's management approaches will allow TxDOT to oversee the level of service being provided to Project and Facility stakeholders. In this regard, each Facility-specific QMP shall include, but not be limited to, standards, criteria and procedures for performance in the following areas:

   1. Quality system and integration of TxDOT oversight;

   2. Environmental compliance;

   3. Traffic data collection and verification;

   4. Other environmental aspects, including air quality, vibration and noise abatement;

   5. The provision and maintenance of facilities for any users who may require specific accessibility considerations (including, but not limited to ADA accessibility, pedestrians, bicyclists, etc., who may use or cross a Facility);

   6. Coordination with Project stakeholders such as municipalities, counties, MPOs, RMAs, utilities, etc.;

   7. File management and document control (i.e., prepare and maintain Project files);

2.1 CONTENTS OF THE QMP

Table F-2 indicates minimum content of the QMP required from the Developer and each of the parties performing work or services for or on behalf of the Developer. The columns other than that labeled "**Developer**" apply only to the extent the Developer or its Affiliates are to perform such functions. Other Parties (as defined above) shall comply with the QMP requirements as they apply to the Developer.

Table F-2 -- Contents of QMP

	Description	**Developer**	**Contractor Design**	**Contractor Constructio**	**Operator**
	The QMP shall include the following in the introduction:				
	• *Executive Summary;*				
	• *Purpose;*				
	• *Confidentiality Statement;*				
	• *Scope of Work; and*				
	• *Deliverables:*				
	The QMP shall describe the quality management system, which includes:				
	a. A quality manual describing the overall quality management system;				
	b. Quality control for monitoring any work and testing undertaken by subcontractors and suppliers both on and off site, including a resource table;				
	c. Quality control for monitoring any services undertaken in the design office and on site including resource table, design review and certification, verification plans, etc;				
	d. Identification of, dealing with, recording and reporting to the Developer the occurrence of any matter that constitutes or may constitute a breach by the Developer of its obligations under the CDA or any Facility Agreement, including non-conforming work or products and on-site problems together with corrective and preventive action reporting in accordance with the CDA;				
	e. Where applicable, a description of any joint venture quality management system to be operated;				
	f. Auditing and management review of the Developer's own and its Subcontractors' activities and quality management systems (including timing and scope);				
	The QMP shall provide details of:				
	g. Name of the Developer's representative with defined authority for establishing, maintaining and reporting on the quality management system during the different stages or sub-stages of the Facility development;				

	Description	Developer	Contractor Design	Contractor Constructio	Operator
	h. Reporting relationships and how the Developer's quality management system will function as a separate and independent process within the Developer's organization				
	i. Interfacing between the Developer and Subcontractors including any design engineer, any quality reviewer and similar parties and their respective quality management systems during planning and design.				
	j. How submittals to TxDOT and other governmental agencies will be implemented, in order to ensure accuracy, completion, and quality.				
	k. A list of quality records required and retention periods;				
	l. A list of particular key reference documents, databases, standards, performance and design input criteria;				
	m. Method for managing and controlling changes and modifications to the QMP;				
	n. Any other measures as necessary to meet the Developer's quality objectives and those imposed by the Developer on its Subcontractors.				

2.2 TXDOT AND DEVELOPER PLAN REVIEWS

TxDOT and the Developer shall meet regularly, and at least quarterly, to discuss the Developer's QMP and verify compliance with the criteria set out in this Exhibit F.

3 SMALL BUSINESS MENTORING PROGRAM

The Small Business Mentoring Program shall include the following components:

1. Approaches the Developer will employ under the Small Business Mentoring Program, to provide mentoring opportunities by the Developer, its Affiliates and principal suppliers and to transfer knowledge and understanding in each of the following headings :
    a. Public-private partnership contracts and organizational structures and how they differ from traditional contracting
    b. Contract requirements between the Developer and its affiliates for the Facility and DBE or small businesses
    c. Resource and equipment needs, allocation and scheduling
    d. Procurement procedures and supply chain management

e. Design under a public-private partnership including constructability, life-cycle cost analysis and value engineering
f. Cost estimating and risk management
g. Schedule management and document control
h. Bonding and insurance
i. Diverse construction activities including quality control and quality assurance.
j. Operations
k. Maintenance
l. Project safety
m. Human resources.

2. Criteria for participation in the Small Business Mentoring Program, including:
    a. The application process for small businesses and any documentation or criteria they must provide or satisfy to be eligible for the program.
    b. Application review process, including identification of individuals from the Developer's, Affiliates' or principal suppliers' organizations who will be responsible for evaluation and selection of participants and the criteria by which they will make selection decisions.
    c. Approximate numbers of mentoring participants the Developer contemplates will be accommodated under each of the headings above.
    d. TxDOT's role in evaluating and selecting participants.
3. The Developer's approach, process and procedures for implementing the Small Business Mentoring Program, including:
    a. A statement of commitment to the Small Business Mentoring Program from the Developer's leadership.
    b. Functional groups and individual job titles and roles within the organizations of the Developer, its Affiliates' and its principal suppliers in which mentoring opportunities will be provided, with an explanation if the Developer is unable to offer mentoring opportunities within a particular organization or functional group.
    c. Procedures setting forth the role of a mentor including mechanisms to record and act on the expectations of participants.
    d. Monitoring and reporting procedures to record each participant's progress and involvement in the program.

e. Procedures to document a participant's completion of the program, and TxDOT's role in the completion process.

f. Presentation and organization of monthly reports to TxDOT describing the status of the Small Business Mentoring Program.

g. Division of the work associated with the Facility into economically feasible units to encourage small business participation.

4. The Developer's approach, process and procedures for Small Business Mentoring Program educational workshops including:

   a. Targeted technical disciplines.

   b. Targeted audiences.

   c. Timing and frequency of formal and/or informal workshops, including how the Developer will provide mentoring before participants are chosen to participate in the program.

5. The Developer's approach, process and procedures for public outreach to ensure the widest possible participation in the Small Business Mentoring Program including:

   a. How potential participants will be identified and included in the program.

   b. How public outreach will be conducted in order to attract potential candidates including the use of trade shows and conferences to attract potential candidates.

6. Measurement of the effectiveness of the Small Business Mentoring Program including how the program will be modified to incorporate lessons learned or to increase participation to meet or exceed established training goals.

EXHIBIT G

SCHEDULE REQUIREMENTS

1 PROJECT SCHEDULE

1.1 General Requirements

The Project Schedule shall define the timeframe for completion of the Project and achievement of milestones, and be used to monitor progress and denote changes that occur during planning and preliminary design phases leadig to the execution of a concession agreement.

After issuance of the Project NTP1 for the Initial Scope of Work, Developer shall collaborate with TxDOT to establish schedule and progress reporting standards for the Project performance period. The Developer may propose, in writing, alternative solutions or exceptions to any of the guidelines set forth in this Exhibit G; however, any proposed alternative or exception is subject to prior review and approval by TxDOT in its sole discretion. TxDOT's decision to approve or disapprove shall be final, binding and not subject to dispute resolution.

Developer shall use the preliminary Project Schedule submitted with the Proposal as a foundation to prepare a Project Baseline Schedule and shall submit a draft of the Project Baseline Schedule to TxDOT for review and approval. Approval of the Project Baseline Schedule shall be a condition of Project NTP2.

The Project Schedule shall be based upon the Critical Path Method (CPM) utilizing retained logic for planning, scheduling, and progress reporting of work to be performed.

Developer shall divide the applicable work into activities with appropriate logic ties to show Developer's overall approach to the planning, scheduling, and execution of the work. Developer shall use standard and consistent project activity identification numbers, textual descriptions, and codes in all Project Schedule submittals, in a manner acceptable to TxDOT.

All activities shall be cost and resource loaded.

The duration and logical relationships of the project activities (or summaries at phase level) shall be based on the actual duration and relationships anticipated.

Developer shall not use calendar dates or constraints to logically begin or complete any project activity unless these dates are shown in the Contract Documents. Project activity durations shall be in units of whole working days.

1.2 Schedule Submittal and Software Requirements

Developer shall submit a single hardcopy of the Project Baseline Schedule on full-size (24" x 36") color plot sheets, along with an electronic version of the schedule in its native format. Developer shall be responsible for updating scheduling software to maintain compatibility with current TxDOT-supported scheduling software.

The scheduling software employed by the Developer shall be compatible with the current version of the scheduling software in use by TxDOT Fort Worth District for this Facility. The Developer shall implement any new operating practices or software required as a result of TxDOT's amendments to any such systems, standards and procedures. TxDOT's current software in use is Primavera Project Manager (v 4.0 for Engineering and Construction). Compatible shall mean that the Developer-provided electronic file(s) version of the Facility Schedule may be loaded or imported by TxDOT using its scheduling software with no modifications, preparation or adjustments.

1.3 Project Schedule Requirements

Project Schedule guidelines and requirements shall apply to each schedule submitted to TxDOT, or update thereto, as part of the schedule for the following:

A. The Initial Scope of Work;

B. Master Development Plan;

C. Facility Implementation Plan;

D. Facility Agreements or other requirements specified in the Contract Documents.

1.3.1 Allocations

Developer shall allocate throughout the Project project activities the total compensation or price for each stage of the Work shown in the Project Schedule, including, where applicable, commodity quantities.

Such allocation shall accurately reflect Developer's cost for each project activity and shall not artificially inflate, imbalance, or front-load line items.

The price of each project activity shall be all-inclusive and shall include all direct and indirect costs, overhead, risks and profit.

1.3.2 Prohibitions

No unspecified milestones, Developer-designated constraints, Project float suppression techniques, or use of Project activity durations, logic ties, and/or sequences deemed unreasonable by TxDOT shall be used in any Project Schedule.

1.3.3 Project Float

All Project Schedule float shall be considered a Project resource available either to TxDOT, Developer, or both, as needed to achieve the scheduled activities and deadlines. All float shall be shown on the Project Schedule on each schedule path.

2 MILESTONES

Developer shall incorporate three types of milestone events into the CPM network: Project Milestones, Facility Milestones and Developer Milestones:

These milestones may be used by the Developer to show proposed starts and completions of major items of Work included in the Scope of Work (e.g. start of investment grade traffic and revenue study or completion of geotechnical survey work, etc.).

2.1.1 Project Milestones

The Project Milestones, identified in Table J-1 of Exhibit J, shall be established in the Project Schedule and shall not exceed the time limits established in the Contract Documents.

Each Project Milestone shall be separately identified, conform to the scheduling requirements set forth in this Exhibit G, and be assigned a "finish no later than" deadline.

2.1.2 Facility Milestones

Each Facility will have its own set of Facility Milestones. Facility Milestones will be set forth in the Facility Schedule developed as part of each Facility Implementation Plan.

2.1.3 Developer Milestones

Developer's Milestones will be interim milestones set by the Developer within the Project Schedule and approved by TxDOT.

Developer's Milestones for the Initial Scope of Work shall include, at a minimum, the milestones set forth in Exhibit J.

3 WORK BREAKDOWN STRUCTURE (WBS)

Developer shall establish a detailed organized hierarchical Work Breakdown Structure (WBS) in accordance with this Exhibit.

The WBS shall have a clearly identifiable linkage between the compensation or price for each stage of the Work and Developer designated project activities represented in the Project Schedule and subsequent Schedule Updates.

Developer shall notify TxDOT, in writing, of any changes in project activity or limits as part of its Schedule Updates and revised Project Schedules, and explain the reasons for the changes.

3.1.1 Work Elements

The WBS for each work element shall indicate the duration, timing, and logical relationship to other work elements, including relationships to Project activities other than the parent project activity of the particular work element.

Project activity durations shall be no longer than sixty (60) days, unless otherwise approved by TxDOT. Activities for all scheduled submissions shall be presented in the greatest detail possible.

The WBS for each Project activity shall be defined in terms of work elements reflecting the types of Work.

4 PROJECT SCHEDULE REPORTING AND UPDATES

4.1 Project Schedule Revisions

As it becomes necessary or desirable to modify the Project Schedule or Developer is required to modify the Project Schedule, Developer shall request changes to the Project Schedule and submit such requested changes in writing to TxDOT for approval.

No changes to the Project Schedule shall be made without the prior written approval of TxDOT. Until TxDOT approves a change, all Project Schedule submittals shall be tracked against the previously approved Project Schedule.

Accepted revisions will be incorporated into the Project Schedule at the next Project Schedule Update.

Revisions in the Project Schedule shall not extend any Project Milestone deadlines unless expressly approved in writing by TxDOT through an update to the Master Development Plan, FIP Preparation Agreement or Implementation Plan.

Approval of extensions to any Project Milestone deadlines shall be in TxDOT's sole discretion, except as otherwise specified in the CDA.

Revised Project Schedule submittals shall include a comprehensive listing of all Project activities added or deleted along with a complete listing of all logic and Project activity changes, and, if applicable, any change in the allocation of the Developer's compensation or price among Project activities.

All changes in the Project Schedule must be fully described in an accompanying narrative.

Once a revised Project Schedule is approved by TxDOT, it shall become the Project Schedule of record and be used as the basis for subsequent Project Schedule Update(s).

4.2 Project Schedule Updates

Developer shall update the approved Project Schedule to reflect the current status of the Project and submit to TxDOT for review the proposed Project Schedule Update in accordance with Section 6.3 of the Agreement.

The Project Schedule Update(s) shall include Developer's detailed schedule for executing the Work and all information and reporting required for the Project Schedule, and shall include only resources actually available to Developer.

The Project Schedule Update(s) shall minimally include the following current Work data:

A. Detailed schedule of activities which clearly identify the Critical Path;

B. Progress for the current update period for all Project activities;

C. Actual start and actual finish dates of Work, percentage complete and days remaining for Work in-progress.

Each Project Schedule submittal shall clearly and individually define the progression of the Work within the applicable time frame by using separate project activities, including but not limited to the applicable items of Work specified in the CDA and agreements executed and plans prepared and approved pursuant to the CDA.

The Project Schedule Update(s) shall reflect updated progress to the status date, forecast finish for in-progress Project activities, and reforecast early dates and late dates for remaining Project activities, but shall otherwise contain no changes in Project activity durations, logic ties, or restraints without approval from TxDOT. It shall also incorporate and fully specify all appropriate information from prior approved Project Schedules.

Each Project Schedule Update shall accurately reflect all activities completed as of the effective date of the updated Project Baseline Schedule. Each Project Status Schedule Update shall indicate the overall completion percentage of the Project.

Each Project Schedule Update submittal shall be clearly identified. Resubmissions of a Project Schedule shall use the same revision number as the original submission individually identified by a sequential appended letter (A, B, etc.), as an indication of a revised version.

Developer shall submit a single hard copy of the Project Schedule Update in a single copy in full-size color plot sheets, along with an electronic version of the schedule in its native format.

The Project Status Schedule Update shall include a schedule narrative report which describes the status of the Project in detail.

Each Project Schedule submittal shall clearly and individually define the progression of the Work within the applicable time frame by using separate Project activities, including but not limited to the applicable items of Work specified in the CDA and agreements executed and plans prepared and approved pursuant to the CDA.

4.3 TxDOT Review of the Project Schedule Update(s)

TxDOT will review the Schedule Update(s) for consistency with the WBS and the current approved Project Schedule and for conformance with the Contract Documents.

Developer shall correct any deficiencies and resubmit its Project Schedule Update(s). TxDOT will notify Developer of corrections required within seven days of receipt of the proposed Schedule Update(s).

Developer shall identify and promptly report to TxDOT all Project Schedule and progress delays during the prosecution of the Work.

The Developer shall prepare and implement Recovery Schedules on the terms and conditions set forth in Section 10.6 of the Agreement.

EXHIBIT H

TERMS AND CONDITIONS OF DEVELOPER'S COMPENSATION FOR INITIAL SCOPE OF WORK

[To Be Attached from Proposal]

EXHIBIT I

TERMS AND CONDITIONS FOR TECHNICAL SUPPORT SERVICES

[To come]

EXHIBIT J

MILESTONES AND DELIVERABLES

1.0 Summary of Milestones

The Project shall have three types of milestones: Project Milestones, Facility Milestones and Developer Milestones, with associated Deliverables and Schedule Requirements (Deadlines).

1.1 Summary of Milestones

The Project and Facility Milestones and deadlines for completion thereof are as follows:

Table J-1 Project and Facility Milestones include:

PROJECT MILESTONE	DEADLINE
Notice to Proceed with finalization of PMP/QMP and Project Schedule (Project NTP1)	60 days after CDA execution
Notice to Proceed for remaining portion of Initial Scope of Work (Project NTP2)	n/a
Initial Scope of Work Complete	12 months after Project NTP2
Implementation Plan Preparation for the Facility (Facility NTP1)*	Within 120 days after agreement by the Parties that the Facility is Ready for Development
Facility Development Work (Facility NTP2)*	Within the time period after Facility NTP2 as set forth in the Facility Implementation Plan
Close of Finance for the Facility (Facility NTP3)*	Within the time period after Facility NTP2 as set forth in the Facility Implementation Plan
Facility NTPs specified within Facility Agreement*	As set forth in the Facility Agreement

** Each Facility will have its own set of Facility Milestones. Facility Milestones will be set forth in the Facility Schedule developed as part of each Facility Implementation Plan.*

1.2 Developer Milestones for Initial Scope of Work

The Developer Milestones consist of the Milestones for the Initial Scope of Work, which will include, at a minimum, the milestones specified under this Exhibit J as Milestones 1 through 7.

The Developer shall perform and complete the Deliverables resulting from the tasks specified in Exhibits D, E, and F for the Initial Scope of Work within the Developer Milestone delivery dates/deadlines. The delivery date/deadline for each Developer Milestone will be determined as a part of the Developer's submittal of the schedule for the Initial Scope of Work (Milestone 1). The schedule shall conform to the guidelines outlined in Exhibit G. The date for Milestone 1 will be 60 days after execution of the CDA. Developer Milestones shall be considered accomplished upon review and

approval of all pertinent deliverables by TxDOT. Delivery dates/deadlines for accomplishing such Developer Milestones are subject to extension, to the extent set forth in the CDA, due to delay by TxDOT in reviewing and commenting on Deliverables within the time periods provided to TxDOT under the terms and conditions of the CDA and due to TxDOT required re-submittals of Deliverables that comply with CDA requirements.

For specific task descriptions, refer to the following:

A. Exhibit D, Master Development Plan Requirements (MDP);
B. Exhibit E, Master Financial Plan Requirements (MFP); and
C. Exhibit F, Project Management Plan/Quality Management Plan Requirements (PMP/QMP).

Developer Milestones 1 through 7 listed below in this section is sequential and shall be completed within twelve (12) months of execution of the CDA.

Milestone 1 – Completion and submission of the Project Management Plan, including the Quality Management Plan component of the Project Management Plan, and the Schedule for the Initial Scope of Work.

Milestone 2 – Completion and submission of Parameters and Assumptions Report, Work Plan, and Financial Management Policies and Procedures Report.

Milestone 3 – Completion of Draft List of Facilities for Project and Draft Project Financial Plan

Milestone 4 – Completion and submission of Draft Facilities Report including all required chapters.

Milestone 5 – Completion and submission of Phasing and Sequencing Report

Milestone 6 – Completion and submission of Master Development Plan and Master Financial Plan.

Milestone 7 – Completion and submission of Master Development Plan and Master Financial Plan Update Methodology Report.

1.3 Initial Scope of Work Deliverables

Table J-2 sets for the work product and Deliverables that are required for each of the Developer Milestones 1 through 7.

Table J-2 Initial Scope of Work Deliverables

Milestone	Deliverable Name	Reference to Exhibits D, E, F, G and (Tasks)	Summary Description	Submittal Format	DeliveryDate/ Deadline*
1	Project Management Plan	F – (Section 1 All Tasks)	Organizational structure, roles and responsibilities of the participants, and resource allocation plan.	Report with exhibits	
1	Quality Management Plan Component of the Project Management Plan	F – (Section 2 All Tasks)	Work plan for undertaking geotechnical site evaluations, surveys and mapping, environmental compliance, safety and structural audit, design aesthetics, and materials compliance testing.	Report with exhibits	
1	Schedule for the Initial Scope of Work	G – All	Schedule of activities and deliverables to be completed during the Initial Scope of Work.	Report with exhibits	
				Milestone 1 Complete:	60 days after execution of CDA
2	Key Parameters and Assumptions Report	D (Tasks A & B)	Report of key parameters and assumptions including demographics, economic trends, impacts on competitiveness, and social/ urbanization trends affecting the Project.	Report with exhibits	
2	Work Plan including Work Breakdown	D (Task C) G – All	Work plan to identify the level and scope of	Memo/ Report	

Milestone	Deliverable Name	Reference to Exhibits D, E, F, G and (Tasks)	Summary Description	Submittal Format	DeliveryDate/ Deadline*
	Structure		participation with TxDOT and other public and private entities, specifying number and schedule of meetings, and proposed participants necessary for coordination during the development of the MDP and MFP. Include a Work Breakdown Structure in accordance with Exhibit G.		
2	Schedule and Progress Reporting Standards	G (All Tasks)	Set of standards for reporting schedule and progress for the entire Project performance period.	Reports	
				Milestone 2 Complete:	
3	Draft List of Facilities for Project	D (Task D)	List of facilities and characteristics, requirements for and structure(s) of the Project.	Report with exhibits	
3	Draft Project Financial Plan	E (Task A)	Report summarizing funding from public and private sources, revenue generation opportunities including commercial activity, and leaseback, conversion of planned and existing facilities, fund uses and risk	Report with exhibits	

Milestone	Deliverable Name	Reference to Exhibits D, E, F, G and (Tasks)	Summary Description	Submittal Format	DeliveryDate/ Deadline*
			analyses.		
				Milestone 3 Complete:	
4	Draft Facilities Report	D (Tasks H-N) E (Task B)	Comprehensive document of Facility revenue, cost risks, conceptual designs/plans, and financing.	Report with exhibits	
4	Draft Facility Funding Sources and Uses	E (Task B)	Document which describes the potential and available sources of funding from public and private entities.	Chapter with exhibits	
4	Preliminary Project Traffic and Revenue	D (Task E)	Preliminary traffic and revenue forecasts to support the overall sequencing of Facilities and revenue generation for the entire Project.	Chapter with exhibits	
4	Facility Cost Analysis	D (Task H) E (Task B)	Cost estimates for planning, design, engineering, ROW, construction, operations and maintenance of proposed Facilities for the entire Project.	Chapter with exhibits	
4	Facility Proforma Analysis	E (Task B)	Document containing Excel file and printed spreadsheets of Facility(s)' income statement, balance sheet, cash flow statement and a list of proforma model assumptions.	Chapter with exhibits	

Milestone	Deliverable Name	Reference to Exhibits D, E, F, G and (Tasks)	Summary Description	Submittal Format	DeliveryDate/ Deadline*
4	Project Risk Analysis	D (Task Q) E (Task B)	Detailed risk matrix for revenue, construction, operations, maintenance and other cost parameters, including allocation and mitigation strategies to determine the Facility(s) that are Ready for Development.	Chapter with exhibits	
4	Conceptual Schematics, Plans, and Layouts of Facilities	D (Task G)	Facility design and preliminary engineering, conceptual cross-sections, conceptual layouts and plans of connectivity/interco nnections .	Plans, maps, and schematics	
4	Facility Integration Plan	D (Task I)	Plan for integrating Facility(s) with other existing or planned transportation and utility facilities outside the right of way listed in the STIP, and an estimate of the impacts to other facilities and plans in the STIP.	Chapter with exhibits	
4	Right-of-Way Chapter	D (Task J)	Plan for Right-of-Way acquisition, corridor preservation, and value capture opportunities.	Report with exhibits	
				Milestone 4 Complete:	
5	Phasing and	D (Tasks	Phasing and	Reports with	

Milestone	Deliverable Name	Reference to Exhibits D, E, F, G and (Tasks)	Summary Description	Submittal Format	DeliveryDate/ Deadline*
	Sequencing Report	OQ) E (Task D)	sequencing plan for the Project and for each Facility(s), including major permitting approvals.	exhibits	
				Milestone 5 Complete:	
6	Master Financial Plan	E- (All Tasks)	Final report of all work to date including funding from public and private sources, revenue generation opportunities including value capture, conversion of planned and existing facilities, fund uses and risk analyses, financial pro-forma analyses, steps for reaching close of finance.	Report with exhibits	
6	Master Development Plan	D – (All Tasks)	Final report of all work to date, including detailed development and financial plans which will prepare Facility(s) to the point of Ready-for-Development. This will include traffic and revenue studies, revenue generation technology plan, preliminary design and engineering plans, and structure(s), operation and maintenance	Reports with exhibits/ Schedule	

Milestone	Deliverable Name	Reference to Exhibits D, E, F, G and (Tasks)	Summary Description	Submittal Format	DeliveryDate/ Deadline*
			management plans, specific warranties and guarantees, specific risk management, mitigation and allocation plans, system supply plans, anticipated 3rd party agreements.		
				Milestone 6 Complete:	
7	Master Development Plan and Master Financial Plan Update Methodology Report	D – (Task Z) E – (Task E)	Document which describes the integration of modifications to the MDP and MFP based on due diligence analyses and achievement of update triggers.	Reports with exhibits	
				Milestone 7 Complete:	

* *Delivery date will be determined as part of Developer's submittal of a Schedule for the Initial Scope of Work as part of Milestone 1.*

EXHIBIT K

DBE PROVISIONS

TxDOT's Disadvantaged Business Enterprise (DBE) program is set forth in Attachment 1 to this Exhibit K. TxDOT's DBE program shall apply to the Initial Scope of Work and any Update Work. Developer's DBE obligations shall also include compliance with DBE Special Provisions 000-461, set forth in Attachment 2 to this Exhibit K and 009-007, set forth in Attachment 3 to this Exhibit K. Copies of any attachments referenced in TxDOT's DBE Program (Attachment 1 to this Exhibit K) which are not otherwise set forth in this Exhibit K are available from TxDOT's Business Opportunities Program Office. In the event of any conflict between the DBE Special Provisions and the DBE program, the former shall prevail.

Disadvantage Business Enterprise (DBE) Program (49 CFR 26)

REVISED JUNE, 2006
REVISED OCTOBER, 1999

Policy Statement

The Texas Department of Transportation (TxDOT) has established a Disadvantaged Business enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. TxDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, TxDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of TxDOT to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to:

- ensure nondiscrimination in the award and administration of DOT assisted contracts;
- create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
- ensure that the DBE Program is narrowly tailored in accordance with applicable law; ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- help remove barriers to the participation of DBEs in DOT assisted contracts; and
- assist in the development of firms that can compete successfully in the market place outside the DBE Program.

Nondiscrimination Policy

TxDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

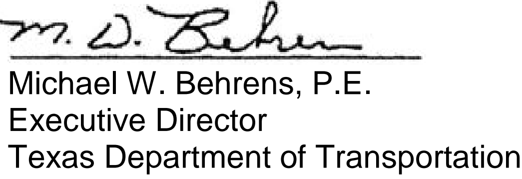
TxDOT has disseminated this policy statement to the Texas Transportation Commission and all the components of our organization. Through the distribution of this DBE program, we have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

Appointment of DBE Liaison Officer (DBELO)

The Director of Business Opportunity Programs Office has been delegated as the DBE Liaison Officer. In that capacity, the Director of Business Opportunity Programs Office is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is

accorded the same priority as compliance with all other legal obligations incurred by TxDOT in its financial assistance agreements with the Department of Transportation.

We have designated the following individual as our DBE Liaison Officer: James T. Dossett, 125 E. 11th St., Austin, Texas 78701. In the capacity, James T. Dossett is responsible for implementing all aspects of the DBE program and ensuring that TxDOT complies with all provisions of 49 CFR Part 26. James T. Dossett has direct, independent access to the Executive Director concerning DBE program matters. The DBELO has 14 professional employees and 4 support staff assigned to the DBE program on a full-time basis. The attached organization chart displays the DBELO's position in the organization.



Michael W. Behrens, P.E. — Date
Executive Director
Texas Department of Transportation

DISADVANTAGE BUSINESS ENTERPRISE (DBE) PROGRAM
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SUBPART A — GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

TxDOT is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

TxDOT is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107. SAFETEA-LU, P.L. 109-59

TxDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L. 105,178. SAFETEA-LU, P.L. 109-59

Section 26.5 Definitions

TxDOT will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

TxDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 - **Attachment I** on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.1 I(b)

We will report DBE participation to DOT as follows:

We will submit annually The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FAA recipients [as amended 68 FR 35556, June 16, 2003.

We will report on a semi-annual basis The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FHWA [as amended 68 FR 35556, June 16, 2003].

We will report on a semi-annual basis The Uniform, Report of DBE Awards or Commitment and Payments as modified for use by FTA recipients [as amended 68 FR 35556, June 16, 2003].

These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

TxDOT will create a bidders list, consisting of information about all DBE and non-UBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms. We will collect this information in the following ways:

> The TxDOT Bidders list consists of firms that include highway construction prime contractors, professional service providers and subcontractor and material suppliers. Subcontractor and material supplier information is supplied by the low bid Prime Contractor. TxDOT Bidders List data was developed from contractors who have submitted bids on highway construction contracts. In the contract proposal, the low bidder, prior to award of the contract, is required to submit bidders information they received for the project. The Bidders List also contains data from DBEs that submitted bids for construction and professional service contracts and from the DBE Commitments and Awards made.

Section 26.13 Federal Financial Assistance Agreement

TxDOT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

> TxDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted

contracts. The recipients DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to TxDOT of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. This information is included in the DBE Special Provision 000-461 1.A.1.b. -**Attachment 2.**

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Department provides U.S. DOT with updates representing significant changes in the program as they occur. The department understands that all changes must be approved by FHWA, ETA, FAA prior to implementation.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

The Director of Business Opportunity Programs Office has been delegated as the DBE Liaison Officer. In that capacity, the Director of Business Opportunity Programs Office is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by TxDOT in its financial assistance agreements with the Department of Transportation.

We have designated the following individual as our DBE Liaison Officer: James T. Dossett, 125 E. 11th St. Austin, Texas 78701, (512)486-5500, jdossett@dot.state.tx.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TxDOTcomplies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. An organizational chart - **Attachment 3** displays the DBELO's position in the organization.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 17 to assist in the administration of the program. The duties and responsibilities of the DBELO and staff include the following:

1 Gathers and reports statistical data and other information as required by DOT.
2 Works with all departments to set overall annual goals.
3 Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4 Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
5 Participates with the Division Directors and District Officials to determine contractor compliance with good faith efforts.
6 Analyzes TxDOT's progress toward DBE goal attainment and identifies ways to improve progress.
7 Participates in pre-bid meetings.
8 Advises the Executive Director and the Texas Transportation Commission on DBE matters and achievement.
9 Chairs the DBE Liaison Committee.
10 Participates in pre-bid meetings.
11 Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12 Plans and participates in DBE training seminars.
13 Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Texas.
14 Provides outreach to DBEs and community organizations to advise them of opportunities.
15 Maintains the Texas Unified Certification Program (TUCP) updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of TxDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made a thorough search for financial institutions owned and controlled by socially and economically disadvantaged individuals in the State of Texas and were unable to identify financial institutions meeting the requirements of Section 26.27.

Section 26.29 Prompt Payment Mechanisms

TxDOT will require prime contractors to pay subcontractors for satisfactory performance of their contracts as specified in the Special Provision 009-007 Measurement and Payment - **Attachment 4**, which is included in all federal-aid contracts.

In regards to the prompt pay full payment of retainage, TxDOT has adopted option 2. TxDOT will decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage held by prime contractor to the subcontractor as specified in Special Provision 009-007 Measurement and Payment — **Attachment 4**.

[68 FR 35553, June 16, 2003]

Section 26.31 Directory

TxDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory on a weekly basis.

The TUCP Certifying Partners agree that TxDOT will serve as the TUCP directory manager. The directory manager will be responsible for the following actions:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the DBE directory current;
- Make the DBE directory available to all TUCP Partners and other interested parties;

- Maintain the TUCP directory website at www.dot.state.tx.us see **Attachment 5** for sample.

Section 26.33 Over-concentration

TxDOT has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

TxDOT has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

TxDOT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

> Monitoring Mechanisms-To ensure that DBE requirements of the DOT assisted contract are complied with, the Department will monitor the Contractors efforts to involve DBEs during the performance of the contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, **and** by compliance reviews conducted on the project site by the Department. The DBE Special Provision 000-461 – **Attachment 2** is included in all federal-aid projects and outlines the monitoring mechanism for compliance with 49 CFR Part 26.
>
> Enforcement mechanisms- A Contractor's failure to comply with the requirements of the DBE Special Provision 000-461 — **Attachment 2** shall constitute a material breach of the federal-aid contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

[As amended at 65 FR 68951 Nov 15, 2000, 68 FR 35554, June 16, 2003]

SUBPART C — GOALS. GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

TxDOT does not use set-asides or quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45(0 TxDOT will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, TxDOT will consult with women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TxDOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that TxDOT will accept comments on the goals for 45 days from the date of the notice. The notice is published on TxDOT's website, newsletter, newspapers, available minority- focus media, and trade publications. Normally, we will issue this notice by June 25th of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 6 to this program. This section of the program will be updated annually.

Section 26.49 Transit Vehicle Manufacturers Goals

TxDOT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, TxDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(d-g) Contract Goals

TxDOT will use contract goals to meet any portion of the overall goal TxDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

TxDOT DBE Special Provision and Bidder's Certification

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

Certification of DBE Goal Attainment

The certification of DBE goal attainment is included in all proposals for federal-aid highway projects. By signing the proposal, the Bidder certifies that the DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal. Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of the requirements of the proposal. As a result, the bid proposal guaranty of the bidder will become property of the Department and the Bidder will be excluded for re bidding on the project when it is re-advertised. See **Attachment 7**.

Tracking and monitoring of DBE goals throughout the life of the contract will be performed by the Department.

The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE race-neutral participation. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. The Business Opportunity Programs Office reviews monthly progress reports through computer programs, i.e. SiteManager and Subcontractor Monitoring System (SMS). Upon continual monitoring of the DBE commitment and payments by the Area Engineer, the Area Engineer will notify the Business Opportunity Programs Office of any issue that requires further review. The Business Opportunity Programs Office will initiate a compliance review and take the appropriate contract remedies. See attached DBE Special Provisions 000-461 - **Attachment 2.**

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

TxDOT's SOP Office is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror. This process for Good Faith Effort is included in the DBE Special Provision 000-461 3.c. - **Attachment 2.**

Information to be submitted (26.53(b))

TxDOT treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and

6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 15 days of being informed by TxDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the Director of the BOP Office, Mr. James T. Dossett 125 E. 11th Street, Austin, Texas 78701, (512)486-5500, jdossett@dot.state.tx.us The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

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

The Districts will be responsible for coordinating and approving Prime s request for Substitution. Districts will notify BOP Office of the determination of a contractors compliance and/or noncompliance of the DBE Special Provision and be responsible for coordinating appropriate sanctions with TxDOTs DBE Liaison Officer. If the contractor fails to comply according to federal regulations specified in 49 CFR §26.53 and according to TxDOT contract specifications the contractor will be sanctioned as outlined in TxDOT DBE Special Provision 000-461-**Attachment 2**.

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

Section 26.55 Counting DBE Participation

TxDOT will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

The district will perform CUF reviews on contracts that have a DBE goal. A CUE review will be performed on DBEs listed on the approved contract commitment using the *Commercially Useful Function (CUP) Project Site Review* checklist. If needed to verify a CUE, obtain a copy of the subcontract agreement for clarification regarding the DBEs contractual responsibilities. BOP Office will perform the CUF reviews on DBE suppliers. For non-supplier DBEs listed on the contract DBE commitment working on the project site and associated project specific locations, complete the checklist as follows:

1. Complete the initial checklist as soon as possible after the DBE's commencement of its work.
2. Monitor the DBE's performance and conduct additional reviews when the DBE's work performance brings into question whether the DBE meets CUF requirements.
3. If information obtained indicates possible noncompliance with the CUF requirements, contact BOP Office for a final determination.

In order to provide consistent interpretations statewide, BOP Office will make final negative CUF determinations and provide guidance and assistance for CUF reviews.

For trucking firms TxDOT will count DBE goal credit as follows:

A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUE when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least I fully licensed, insured, and operational truck used on the contract.

(a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.
(b) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
(c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

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

[68 FR 35554, June 16,2003]

Use Of Joint Checks

With department approval, the use of joint checks between a prime contractor and a DBE subcontractor is allowed. The new DBE Special Provision Section 1.A.5.d. states the following regarding the use of joint checks:

> ***"If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a Joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement***
>
> ***The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier."***

Procedures- For all federal-aid contracts, review and approve the use of joint checks prior to their use. Districts should verify that the DBE subcontractor is responsible for ordering scheduling delivery and issuing payment for the materials.

Prime contractor requests for joint check approval must be submitted to the Area Engineer on *Form 2178, DBE Joint Chock Approval* - **Attachment 8**. The Department will expedite approval or denial of the use of DBE joint check agreements to ensure timely delivery of materials. Reasons for denial include, but are not limited to, the prime contractor's insistence on the joint check arrangement and failure of all parties to agree to the arrangement (only the DBE or the supplier may request the use of a joint check).

Obtain copies of cancelled joint checks as necessary to verify that the joint checks have passed through the DBE. Bank images are an acceptable method of review. Review the joint check agreements as necessary to ensure that a three party arrangement exists.

Material cost paid by the prime contractor directly to the material supplier is not allowed for DBE goal credit and may cause the denial of DDE goal credit for all work performed by the DDE subcontractor.

SUBPART D — CERTIFICATION STANDARDS

TxDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DDE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.
For information about the certification process or to apply for certification, firms should contact:

The BOP Office, 125 B 11th Street, Austin, Texas 78701, Toll Free 1-866480-2518

Our certification application forms and documentation requirements are found in the attached TUCP Standard Operating Procedures (SOP) at **Attachment 9**.

SUBPART E — CERTIFICATION PROCEDURES

TxDOT is a member of the Texas Unified Certification Program (TUCP)]. The TUPC will meet all of the requirements of this section. A description of the TUCP Memorandum of Agreement (MOA) is found at **Attachment 10**.

Withdrawal of DBE Application: TxDOT will follow the procedures under the TUCP for withdrawal DDE Application. A DDE may withdraw their application prior to a certification decision being rendered by TxDOT. TxDOT will acknowledge the DBE request for withdrawal of DDE Application by certified letter. The DBE may not reapply for certification for a period of 12 months from the date of receipt of TXDOT's letter, this withdrawal may not be appealed to US DOT.

Voluntary Surrender of Certification: TxDOT will follow the procedures under the TUCP for surrender of DDE Certification. A DBE may surrender their certification and TxDOT will acknowledge the DBE's request for surrender of their certification by certified letter. The DDE may not reapply for certification for a period of 12 months from the date of receipt of TxDOT's letter. This voluntary surrender may not be appealed to US DOT.

Section 26.83 Procedures for Certification Decisions

For procedures for the certification decisions see the attached TUCP Standard Operating Procedures (SOP) at **Attachment 9**.

TxDOT is one of six certifying agencies in Texas. The six certifying agencies have agreed by Memorandum of Agreement that TxDOT will be responsible for all highway construction industry DBE applications, Annual Affidavits, three-year on-site review, and decertification if applicable.

TxDOT will ensure that the decision in a proceeding to remove a firm's eligibility (decertification) is made by personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the mailer, to direction from personnel who did take part in these actions.

SUBPART F — COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

TxDOT will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE Certification and supporting documentation.

TxDOT will keep the identity of complainants confidential at their election, however complainants will be advised that in some circumstances, failure to waive the privilege will result in the closure of the investigation or proceeding or hearing. Federal Aviation Administration (FAA) follows the procedures of 14 CFR part 16 with respect to confidentiality of information and complaints.

All participants in the Department's DBE Program (including but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigation and other request for information. Failure to do so shall be a ground for appropriate action against the party involved.

If you are a recipient, contractor, or any other participant in the program you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part. Records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

ATTACHMENTS

Attachment 1 DBE Regulations: 49 CFR Part 26
Attachment 2 DBE Special Provision 000461
Attachment 3 Organizational Chart
Attachment 4 Measurement and Payment Special Provision 009-007
Attachment 5 TUCP DBE directory example and website address to the directory
Attachment 6 DBE Goal Methodology
Attachment 7 DBE Bidder Certification
Attachment 8 DBE Joint Check Approval Form
Attachment 9 TUCP SOP
Attachment 10 TUCP MOA

ATTACHMENT 2 TO EXHIBIT K

DBE PROVISIONS

SPECIAL PROVISION
000---461
Disadvantaged Business Enterprise in Federal-Aid Construction

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

   A. Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.

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

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

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

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

d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment. The Department will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days, excluding national holidays, from receipt of the information outlined in this Special Provision under Section 1.A.3, "Contractor's Responsibilities." If the requirements of Section 1.A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

2. Definitions.

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

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

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

d. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

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

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

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

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

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

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

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

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

l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

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

a. After conditional award of the contract, the Contractor shall submit a completed Form No. SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 10th business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.

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

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

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

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

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

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

- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are

reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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

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

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

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

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

d. Should the bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

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

f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a

completed Form No. 4901, "DBE Commitment Agreement," for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

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

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

4. Eligibility of DBEs.

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

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

c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

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

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

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

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

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

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

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

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

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

(3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

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

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

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

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

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

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

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

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

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

For purposes of this Section (1.A.5.c.(2)), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract

are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

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

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

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

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

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

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

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

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

6. Records and Reports.

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

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

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

- **d.** Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."

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

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

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

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

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

When a DBE subcontractor, named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or

to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

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

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

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

ATTACHMENT 3 TO EXHIBIT K

DBE PROVISIONS

SPECIAL PROVISION
009---007
Measurement and Payment

For this project, Item 009, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 9.6. Progress Payments, Section A, Retainage is voided and replaced by the following:

A. Retainage. Retainage will not be withheld on this project.

Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors is voided and replaced by the following:

B. Payment Provisions for Subcontractors. For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and
- the work done by the subcontractor has been inspected and approved by the Department and the final quantities of the subcontractor's work have been determined and agreed upon.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Department may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

EXHIBIT L

RISK EVENTS MATRIX

Risk Event \ Project Status at Risk Event[1]	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
ENVIRONMENTAL AND OTHER THIRD PARTY APPROVALS				
Facility NEPA no-action	Facility removed from MDP; (no addl. comp)	Facility removed from MDP; remedy for unpaid Facility Development Work costs as set forth in FIP	Facility removed from MDP; Dev. entitled to compensation for Update Work per MDP	Facility removed from MDP;remedy for unpaid Facility Development Work costs as set forth in FIP
Facility NEPA substantial-ly different from proposal/ MDP/FIP	Parties negotiate required changes into MDP, or if don't agree, facility removed from MDP; (no addl. comp).	Remedy set forth in FIP	Parties negotiate required changes into MDP; Dev. entitled to compensation for Update Work per MDP.	Remedy set forth in FIP

[1] This matrix identifies the remedies of the parties in the event that identified risks occur at various stages of Project and Facility development. The remedies for Facility risk events that occur after Close of Finance for the Facility will be set forth in the Facility Agreements for that Facility and are not included in this matrix.

[2] The first two columns of remedies pertain to events that may occur during the Initial Scope of Work, prior to approval of a Master Development Plan. The two columns within this major grouping indicate the status of work that is being performed on a Facility that is impacted by the Risk Event prior to Close of Finance and execution of a Facility Agreement for that Facility.

[3] The second two columns of remedies pertain to events that may occur after approval of a Master Development Plan.

Risk Event \ Project Status at Risk Event[1]	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
Facility NEPA delays	Parties negotiate required changes into Project Schedule; (no addl. comp).	If due to Developer's design, parties negotiate required changes in Project and Facility Schedules (no addl. comp). If due to any other reason, remedy set forth in FIP	Parties negotiate required changes into Project Schedule; no addl. comp.	If due to Developer's design, parties negotiate required changes in Project and Facility Schedules (no addl. comp). If due to any other reason, remedy set forth in FIP
Failure to receive 3rd party approvals	n/a	Remedy set forth in FIP	n/a	Remedy set forth in FIP
Conditions on 3rd party approvals	n/a	Remedy set forth in FIP	n/a	Remedy set forth in FIP
Delays due to 3rd party approvals	n/a	Remedy set forth in FIP	n/a	Remedy set forth in FIP
PARTIES FAIL TO REACH AGREEMENT ON ESSENTIAL TERMS				
Parties do not agree on MDP terms	Either party may terminate; remedy for unpaid ISOW costs per Exhibit H.	Either party may terminate; remedy for unpaid ISOW costs per Exhibit H remedy for Facility Development Work costs as set forth in FIP.	n/a	n/a
Parties do not agree on MDP updates affecting	n/a	n/a	Either party may terminate; (no addl. comp).	Either party may terminate; remedy for unpaid Facility Dev.

Project Status at Risk Event[1] / Risk Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
material general terms of MDP[4]				Work costs as set forth in FIP.
Parties do not agree on MDP updates affecting a Facility	n/a	n/a	Either party may remove Facility from MDP; (no addl. comp.)	Either party may remove Facility from MDP; remedy for unpaid Facility Development Work costs as set forth in FIP.
Dev. believes Facility Ready for Develop-ment/ TxDOT does not	FIP request denied. Next request no earlier than 3 mths. after denial, except as otherwise provided in CDA §7.3.2 (no addl. comp).	n/a	FIP request denied. Next request no earlier than 3 mths. after denial, except as otherwise provided in CDA §7.3.2. After four consecutive denials over 12 months, Dev. entitled to terminate CDA (no addl. comp).	n/a
TxDOT believes Facility Ready for Develop-ment/ Dev. does not	Facility removed from MDP; (no addl. comp).	n/a	Facility removed from MDP; (no addl. comp.)	n/a
Parties do not agree on FIP terms	Facility removed from MDP; (no addl. comp).	n/a	Facility removed from MDP; (no addl. comp).	n/a

4 Updates may include renegotiation of general pricing methodology for FIP request and prep. costs and/or for Facility Development Work in FIP if a Facility has been removed from the MDP for any of the potential reasons listed in this matrix.

Project Status at Risk Event[1] / Risk Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
FINANCIAL RISKS				
Close of Finance delays (with and without fault)	n/a	Remedies set forth in FIP	n/a	Remedies set forth in FIP
Failure to reach Close of Finance (with and without fault) (including events under CDA §8.4.3)	n/a	Remedies set forth in FIP	n/a	Remedies set forth in FIP
OTHER PROJECT RISKS BEYOND THE CONTROL OF THE PARTIES[5]				
Lawsuit challenging CDA/ legis. (no injunction)	TxDOT may suspend work per §10.7 or Parties negotiate required changes into MD; (no addl. comp).	TxDOT may suspend work per §10.7 or Parties negotiate required changes into MDP and Dev. remedy set forth in FIP	TxDOT may suspend work per §10.7 or Parties negotiate required changes into MDP; Dev. entitled to compensation for Update Work per MDP.	TxDOT may suspend work per §10.7 or Parties negotiate required changes into MDP and Dev. remedy set forth in FIP
Lawsuit challenging Facility (no injunction)	Parties negotiate required changes into MDP, or if don't agree, facility removed from MDP (no addl. comp).	Remedy set forth in FIP	Parties negotiate required changes into MDP; Dev. entitled to compensation for Update Work per MDP	Remedy set forth in FIP
Lawsuit challenging Project/ legis. (Project	Either party may terminate after 1 year of temporary inj. or after permanent inj.; remedy	Either party may terminate after 1 year of temporary. inj. or after permanent inj; remedy for unpaid ISOW	Either party may terminate after 1 year of temporary inj. or after permanent inj; .	Either party may terminate after 1 year of temp. inj. or after perm. inj; for unpaid Facility

[5] Developer and TxDOT will have right to cure breaches of the CDA that are able to be cured within certain cure period.

Project / Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
enjoined) [Note: If ultimately able to proceed and delay less than 1 year, rights and obligations same as for change in law delays of up to one year (see below).]	for unpaid I SOW costs for completed milestones per Exhibit H.	costs for completed milestones per Exhibit H; remedy for unpaid Facility Development Work costs as set forth in FIP.		Development Work costs as set forth in FIP.
Lawsuit challenging Facility or authority to proceed with Facility under the CDA or with Facility Agreement (Facility enjoined) [Note: If ultimately able to proceed and delay less than 1 year, rights and	Parties negotiate required changes to MDP or if can't agree remove Facility from MDP; (no addl. comp).	Parties negotiate required changes to MDP or if can't agree remove Facility from MDP; remedy for unpaid Facility Development Work costs as set forth in FIP	Parties negotiate required changes to MDP or if can't agree remove Facility from MDP; Dev. entitled to compensation for Update Work per MDP	Parties negotiate required changes to MDP or if can't agree remove Facility from MDP; Dev. entitled to compensation for Update Work per MDP; remedy for unpaid Facility Development Work costs as set forth in FIP

Project / Risk Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
obligations same as for change in law delays of up to one year (see below).]				
Change in law that frustrates purpose of CDA or MDP (includes change in law delays of more than one year)	Either party may terminate CDA and treat as termination for convenience under §20.	Either party may terminate CDA and treat as termination for convenience under §20	Either party may terminate CDA and treat as termination for convenience under §20	Either party may terminate CDA and treat as termination for convenience under §20
Change in law delays of up to one year	Dev. entitled to time extension; Initial Scope of Work and Project Schedules revised as necessary; (no addl. comp).	Dev. entitled to time extension; parties negotiate changes to Project and Facility Schedules; remedy for FIP implementation delays (including Dev. comp. for delay, if any) set forth in FIP	Dev. entitled to time extension; Project Schedule revised as necessary; (no addl. comp).	Dev. entitled to time extension; parties negotiate changes to Project and Facility Schedules; remedy for FIP implementation delays (including Dev. comp. for delay, if any) set forth in FIP
Change in state law that requires change to MDP	Parties negotiate required changes into MDP. If requires substantial revisions to MDP, parties may renegotiate Initial Scope of Work price.	Parties negotiate required changes into MDP and Dev. comp. for Initial Scope of Work; Dev. will also be entitled to any remedy set forth in FIP	Parties negotiate required changes into MDP. Dev. entitled to compensation for Update Work per MDP	Parties negotiate required changes into MDP. Dev. entitled to compensation for Update Work per MDP; Dev. will also be entitled to any remedy set forth in FIP

Project Status at Risk Event[1] / Risk Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
Change in state law that affects Facility or FIP	Parties negotiate required changes into MDP, or if don't agree, facility removed from MDP. If requires substantial revisions to MDP, parties may renegotiate Initial Scope of Work price.	Remedy set forth in FIP	Parties negotiate required changes into MDP, or if don't agree, facility removed from MDP. Dev. entitled to compensation for Update Work per MDP	Remedy set forth in FIP
Major Catastro-phe delays	Dev. entitled to time extension; Project Schedule revised as necessary; (no addl. comp).	Dev. entitled to time extension; parties negotiate changes to Project Schedule; remedy for FIP implementation delays (including Dev. comp. for delay, if any) set forth in FIP	Dev. entitled to time extension; Project Schedule revised as necessary; (no addl. comp).	Dev. entitled to time extension; parties negotiate changes to Project Schedule; remedy for FIP implementaion delays (including Dev. comp. for delay, if any) set forth in FIP
ROW acquisition delays	n/a	Remedy set forth in FIP if applicable	n/a	Remedy set forth in FIP if applicable
EVENTS WITHIN THE CONTROL OF THE PARTIES[6]				
Dev. Fails to meet Initial Scope of Work milestones	Subject to CDA §10.6, TxDOT termination of CDA and recovery of damages	Subject to CDA §10.6, TxDOT termination of CDA and recovery of damages	n/a	n/a

[6] Developer and TxDOT will have right to cure breaches of the CDA that are able to be cured within certain cure period.

Project Status at Risk Event[1] / Risk Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
TxDOT suspends work under CDA 10.7.1	Developer is entitled to time extension; Dev. entitled to reasonable demobilization and remobilization costs if right to demob; Dev. ISOW comp. renegotiated if delayed for more than 12 months; Dev. entitled to terminate CDA after 12 months and treat as termination for convenience under §20.	Developer is entitled to time extension; Developer entitled to reasonable demobilization and remobilization costs if right to demob; Dev. ISOW comp. renegotiated if delayed for more than 12 months; Dev. entitled to terminate CDA after 12 months and treat as termination for convenience under §20.	Developer is entitled to time extension; Developer entitled to reasonable demobilization and remobilization costs if right to demob; Dev. entitled to terminate CDA after 12 months and treat as termination for convenience under §20.	Developer is entitled to time extension; Developer entitled to reasonable demobilization and remobilization costs if right to demob; Dev. entitled to terminate CDA after 12 months and treat as termination for convenience under §20.
TxDOT causes delay	Developer is entitled to time extension; Dev. ISOW comp. renegotiated if delayed for more than 12 months	Developer is entitled to time extension; Dev. remedy for delay, if any, set forth in FIP	Developer is entitled to time extension	Developer is entitled to time extension; Dev. remedy for delay, if any, set forth in FIP
Dev. fails to meet CDA/MDP milestones re Facilities	TxDOT removal of applicable Facility (and other un-financed Facilities at TXDOT's election) from CDA; (no addl. comp).	TxDOT removal of applicable Facility (and other un-financed Facilities at TXDOT's election) from CDA; (no addl. comp).	TxDOT removal of applicable Facility (and other un-financed Facilities at TXDOT's election) from CDA; (no addl. comp).	TxDOT removal of applicable Facility (and other un-financed Facilities at TXDOT's election) from CDA; (no addl. comp).
Dev. fails to meet FIP milestones	n/a	Subject to CDA §10.6, remedies per CDA §21 and FIP.	n/a	Subject to CDA §10.6, remedies per CDA §21 and FIP.

Project Status at Risk Event[1] / Risk Event	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
Bankruptcy[7] of Developer	Remedies per CDA §21.	Remedies per CDA §21.	Remedies per CDA §21.	Remedies per CDA §21.
Bankruptcy of one of Developer's members or Guarantor	TxDOT may request financial assurances and require additional equity and/or partners or members, subject to TxDOT approval or elect to pursue remedies per CDA §21.	TxDOT may request financial assurances and require additional equity and/or partners or members, subject to TxDOT approval or elect to pursue remedies per CDA §21.	TxDOT may request financial assurances and require additional equity and/or partners or members, subject to TxDOT approval or elect to pursue remedies per CDA §21.	TxDOT may request financial assurances and require additional equity and/or partners or members, subject to TxDOT approval or elect to pursue remedies per CDA §21.
TxDOT terminates CDA without cause (for conveni-ence)	Dev. entitled to compensation as provided in CDA §20.3	Dev. entitled to compensation as provided in CDA §20.3	Dev. entitled to compensation as provided in CDA §20.3	Dev. entitled to compensation as provided in CDA §20.3
TxDOT terminates Facility without cause (for con-venience)	MDP reflects change; if requires substantial revisions to MDP, parties may renegotiate Initial Scope of Work price.	MDP reflects change; Dev. entitled to compensation as provided in CDA §20.4	MDP updated to reflect change; Dev. entitled to compensation for Update Work per MDP	MDP updated to reflect change; Dev. entitled to compensation for Update Work per MDP
Material Breach of CDA by Dev. or Affiliate	Remedies per CDA §21.	Remedies per CDA §21 and FIP.	Remedies per CDA §21.	Remedies per CDA §21 and FIP.
Material Breach of CDA by	Developer may terminate and recover	Developer may terminate and recover damages as	Developer may terminate and recover damages as	Developer may terminate and recover

7 Including insolvency, reorganization, assignment of substantially all assets for benefit of creditors, dissolution or liquidation or cessation of business in the ordinary course

Risk Event \ Project Status at Risk Event[1]	During Initial Scope of Work[2]		After MDP Approval[3]	
	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)	Prior to Approval of FIP	Between Facility NTP2 and Close of Finance (Facility Dev. Work)
TxDOT	damages as specified in the CDA	specified in the CDA	specified in the CDA	damages as specified in the CDA
Material Breach of Dev. or Affiliate under Facility Agreement or Concession Facility CDA	TxDOT may treat as a material breach of CDA; remedies per CDA §21.	TxDOT may treat as a material breach of CDA; remedies per CDA §21.	TxDOT may treat as a material breach of CDA; remedies per CDA §21.	TxDOT may treat as a material breach of CDA; remedies per CDA §21.

EXHIBIT M

DISPUTE RESOLUTION PROCESS

43 Texas Administrative Code Section 9.2 applies to Disputes subject to Section 22 of the Agreement. 43 Texas Administrative Code Section 9.6 is included in this Exhibit M for reference, but does not apply to Disputes arising under the Agreement. If agreed by the parties to a Facility Agreement, Section 9.6 may be included in the dispute resolution process for the Facility Agreement.

SUBCHAPTER A. GENERAL

§9.2. Contract Claim Procedure.

(a) Applicability. A claim shall satisfy the requirements in paragraphs (1) – (3) of this subsection.

(1) The claim is under a contract entered into and administered by the department, acting in its own capacity or as an agent of a local government, under one of the following statutes:

(A) Transportation Code, §22.018 (concerning the designation of the department as agent in contracting and supervising for aviation projects);

(B) Transportation Code, §391.091 (concerning erection and maintenance of specific information logo, major area shopping guide, and major agricultural interest signs);

(C) Transportation Code, Chapter 223 (concerning bids and contracts for highway improvement projects), subject to the provisions of subsection (c) of this section; or

(D) Government Code, Chapter 2254, Subchapters A and B (concerning professional or consulting services).

(2) The claim is for compensation, or for a time extension, or any other remedy.

(3) The claim is brought by a prime contractor or by the department.

(b) Pass-through claim. A prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim.

(c) Claim concerning comprehensive development agreement. A claim under a comprehensive development agreement (CDA) entered into under Transportation Code, Chapter 223, Subchapter E, may be processed under this section if the parties agree to do so in the CDA, or if the CDA does not specify otherwise. However, if the CDA specifies that a claim procedure authorized by §9.6 of this chapter (relating to Contract Claim Procedure for Comprehensive Development Agreement) applies, then any claim arising under the CDA shall be processed and resolved in accordance with the claim procedure authorized by §9.6 of this chapter and not by this section.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise, except that when used in subsection (c) of this section, the terms claim, comprehensive development agreement and CDA shall have the meanings given such terms stated in §9.6 of this chapter.

(1) Claim—-A claim for compensation, or other dispute, disagreement, or controversy concerning respective rights and obligations under the contract including any alleged breach or failure to perform and for remedies.

(2) Claimant--The department or prime contractor who submits a contract claim under this section.

(3) Commission--The Texas Transportation Commission.

(4) Committee--The Contract Claim Committee.

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

(6) Department office--The department district, division, or office responsible for the administration of the contract.

(7) Department office director--The chief administrative officer of the

responsible department office; the officer shall be a district engineer, division director, or office director.

(8) District--One of the 25 districts of the department.

(9) Executive director--The executive director of the Texas Department of Transportation.

(10) Prime contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the state of Texas which is entered into and administered by the department under Transportation Code, §22.018, §391.091, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(11) Project--The portion of a contract that can be separated into a distinct facility or work unit from the other work in the contract.

(e) Contract claim committee. The executive director shall name the members and chairman of a committee or committees to serve at the executive director's pleasure. The chairman may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the prime contractor involved in a contract claim.

(f) Negotiated resolution. To every extent possible, disputes between a prime contractor and the department's project engineer should be resolved during the course of the contract.

(g) Procedure.

(1) Exclusive procedure. Except as provided in subsection (c) of this section, a contract claim shall be filed under the procedure in this subsection. A claim must be considered first by the committee before the claim is considered in a contested case hearing.

(2) Filing claim.

(A) The claimant shall file a contract claim after completion of the contract or when required for orderly performance of the contract. A claim shall be filed no later than one year after the earlier of the following:

(i) the department issues notice to the contractor that it is in default, or the department terminates the contract; or

(ii) the department issues final acceptance of the project that is the subject of the contract.

(B) The claimant shall file a contract claim request and a detailed report with the department's construction division, the department engineer under whose administration the contract was or is being performed, or the committee.

(C) If filed by a prime contractor, the claim shall include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(D) A defective certification shall not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department shall require a defective certification to be corrected.

(E) The construction division or department engineer shall forward the contract claim request and detailed report to the committee.

(3) Evaluation of claim by the committee.

(A) The committee's responsibility is to gather information, study the relevant issues, and meet informally with the prime contractor if requested. The committee shall attempt to resolve the claim.

(B) The committee shall secure detailed reports and recommendations from

the responsible department office, and may confer with any other department office deemed appropriate by the committee. If the department is the claimant, the committee shall give the prime contractor the opportunity to submit a responsive report and recommendation.

(C) The committee shall afford the prime contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the prime contractor an opportunity to present relevant information and respond to information the committee has received from the department office. Proceedings before the committee are an attempt to mutually resolve a contract claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a contract claim are part of the attempt to mutually resolve a contract claim without litigation, and are also not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The committee chairman shall give written notice of the committee's decision on the claim to the department and prime contractor. The department and prime contractor are presumed to receive the decision three days after it is sent by United States mail.

(i) If the claimant does not object to the committee's decision, the claimant shall file a written statement with the committee's chairman stating that the claimant does not object. The claimant shall file the statement no later than 20 days after receipt of the committee's decision. The chairman shall then prepare a document showing the settlement of the claim including, when required, payment either to the department or to the prime contractor, and the claimant's release of all claims under the contract. The claimant shall sign it. The executive director may approve the settlement,

or may request the commission to approve the settlement by issuance of an order. The executive director shall then implement the resolution of the claim, and if contemplated in the committee's decision, expend funds as specified in the decision.

(ii) If the claimant objects to the committee's decision the claimant shall file a petition with the executive director no later than 20 days after receipt of the committee's decision requesting an administrative hearing to litigate the claim under the provisions of §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the claimant fails to file a written petition under clause (ii) of this subparagraph within 20 days of receipt of the committee's decision, the claimant waives his right to a contested case hearing. All further litigation of claims on the project or contract by the claimant shall be barred by the doctrines of issue and claim preclusion. The chairman shall then prepare an order implementing the resolution of the claim under the committee's decision, and stating that further litigation on the claim is prohibited. The executive director shall then issue the order and implement the resolution of the claim, and if contemplated in the committee's decision, expend funds as specified in the decision.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a claim. The administrative law judge's proposal for decision shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(h) Claim forfeiture. A claim against the department shall be forfeited to the department by any person who corruptly practices or attempts to practice any fraud against the department in the proof, statement, establishment, or allowance thereof. In

such cases the department shall specifically find such fraud or attempt and render judgment of forfeiture. This subsection applies only if there is clear and convincing evidence that a person knowingly presented a false claim for the purpose of getting paid for the claim.

(i) Relation of contract claim proceeding and sanction proceeding.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the processing of a contract claim under this section is a separate proceeding and shall not affect the executive director's assessment of a contract sanction under Subchapter G of this chapter (relating to Contractor Sanctions).

(2) If a contested issue arises that is relevant both to a contract claim proceeding and a sanction proceeding concerning the same contract, the issue shall be resolved in the proceeding that the executive director refers first for a contested case hearing under Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases). If the issue is decided in the first proceeding that decision shall apply to and be binding in all subsequent department proceedings.

(3) This paragraph applies to a contract under which the parties agreed to submit questions which may arise to the decision of a department engineer. If a dispute under the contract leads to a contract claim proceeding or sanction proceeding, the engineer's decision shall be upheld unless it was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment.

SUBCHAPTER A. GENERAL

§9.6. Contract Claim Procedure for Comprehensive Development Agreement.

(a) Purpose. This section concerns processing and resolution of a claim under Transportation Code, §201.112 that arises under a comprehensive development agreement (CDA).

(b) Applicability.

(1) The executive director may enter into a CDA containing a claim procedure and provisions authorized by this section. When a claim arises under a CDA containing a claim procedure authorized by this section, the requirements of this section apply, §9.2 of this chapter (relating to Contract Claim Procedure) does not apply, and the parties shall follow the claim procedure contained in the CDA and shall be bound by the outcome of the claim procedure. If a CDA does not contain a claim procedure authorized by this §9.6 of this chapter, either by express reference to this section or by inclusion of provisions required or permitted by this section, then a claim under the agreement shall be processed and resolved under §9.2 of this chapter.

(2) The claim procedure and provisions authorized by this section may be applied to claims that arise under the CDA, related agreements that collectively constitute a CDA, or other agreements entered into with or for the benefit of the department in connection with the CDA. A CDA shall identify the related agreements and any other agreements to which the claim procedure and provisions apply.

(3) This section and §9.2 of this chapter do not affect or impede the department's or the developer's rights to seek judicial relief in connection with the following types of actions or proceedings, and the claim procedures and provisions in this section or in §9.2 of this chapter do not apply to such actions:

(A) equitable relief that the department is permitted to seek to the extent allowed by law;

(B) mandamus action that a developer is permitted to bring against the department or the executive director under Government Code, §22.002(c);

(C) mandamus relief sought by a developer under Transportation Code, §223.208(e) (relating to termination compensation and related security obligations); or

(D) other matters or disputes expressly excluded from the dispute resolution procedures authorized by this section, as specified in the CDA or other related agreement between the department and the developer that is part of the CDA.

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

(1) Claim--A claim for compensation, or other dispute, disagreement, or controversy concerning respective rights, obligations, and remedies under the CDA, or under related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA, including any alleged breach or failure to perform.

(2) Comprehensive development agreement (CDA)--An agreement with a developer that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a project described in Transportation Code, §223.201(a), and may also provide for the financing, acquisition, maintenance, or operation of such a project. A CDA is also authorized under Transportation Code, §91.054 (rail facilities), and under Transportation Code, §227.023 (Trans-Texas Corridor). A CDA includes related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA.

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

(4) Developer--The private entity or entities that enter into a CDA with the department.

(5) Disputes board--A group of one or more individuals appointed under the terms of a CDA to fairly and impartially consider and decide a claim between the department and a developer.

(6) Disputes board error--One or more of the following actions:

(A) a disputes board acted beyond the limits of its authority established under subsection (b)(3) of this section;

(B) a disputes board failed, in any material respect, to properly follow or apply the procedure for handling, hearing and deciding a claim established under the CDA and the failure prejudiced the rights of a party;

(C) a disputes board decision was procured by, or there was evident partiality by a disputes board member due to a conflict of interest (which may be defined in the CDA), misconduct (which may be defined in the CDA), corruption, or fraud; or

(D) any other error that the parties agree may be the subject of a contested case hearing, as set out in the CDA.

(7) Executive director--The executive director of the Texas Department of Transportation.

(8) Party--The department, or a developer who has entered into a CDA with the department. The department and the developer are together referred to as the "parties."

(9) SOAH--State Office of Administrative Hearings.

(d) Mandatory requirements. A CDA that authorizes the use of a claim procedure authorized by this section shall include (or incorporate by reference) provisions substantially consistent with the provisions in this subsection, but such provisions need not apply to claims excluded from the claim procedure under subsection (b)(3) of this section.

(1) A claim under the CDA that is not resolved by the informal dispute

resolution process set forth in the CDA shall be referred to a disputes board for rendering of a disputes board decision on the claim.

(2) The processing of a claim shall include a mandatory informal dispute resolution process, such as mediation, and a mandatory dispute resolution procedure using a disputes board.

(3) The party making a claim shall include in its notice of the claim a certification by an authorized or designated representative to the effect that:

(A) the claim is made in good faith;

(B) to the current knowledge of the party, except as to matters stated in the notice of claim as being unknown or subject to discovery, the supporting data is reasonably believed by the party to be accurate and complete, and the description of the claim contained in the certification accurately reflects the amount of money or other right, remedy, or relief to which the party asserting the claim reasonably believes it is entitled; and

(C) the representative is duly authorized to execute and deliver the certificate on behalf of the party.

(4) The certification required under subsection (d)(3) of this section, if defective, shall not deprive a disputes board of jurisdiction over the claim. Prior to the entry by the disputes board of a final decision on the claim, the disputes board shall require a defective certification to be corrected.

(e) Permissive requirements. A CDA that provides for a claim procedure authorized by this section may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding claim resolution that are not contrary to the mandatory requirements of this section.

(1) The executive director shall adopt the decision of a disputes board as a

ministerial act, subject to a party's right to request a contested case hearing in accordance with the terms of the CDA as to whether disputes board error occurred.

(2) A decision by a disputes board, upon completion of the procedure required in Transportation Code, §201.112, this section, and in the CDA, is final, conclusive, binding upon, and enforceable against the parties, subject to any appeals allowed by the CDA or this section.

(3) A disputes board, upon issuing a decision on a claim, is authorized to direct that an award be paid from the proceeds of any trust or other pool of project funds that the CDA provides shall be available for payment of such claims.

(4) The executive director's discretion or actions in connection with the resolution of a claim are limited or may be purely ministerial in certain circumstances, including:

(A) adoption of the disputes board's decision absent disputes board error;

(B) referral of a disputes board decision to SOAH to determine whether disputes board error occurred; and

(C) issuance of a final order based on the SOAH administrative law judge's proposal for decision.

(5) Certain claims may be categorized and treated by the parties as expedited claims, and informal resolution procedures shall be expedited for such claims.

(6) Certain claims may be categorized and treated by the parties as small claims, and informal resolution procedures shall be expedited for such claims.

(7) The parties may execute a related disputes board agreement, or similar agreement, which shall be part of the CDA and which may govern all aspects of the creation of and procedures to be followed by a disputes board.

(8) The evidence presented to a SOAH administrative law judge in a hearing regarding a claim, and to the Travis County District Court in any appeal, may include:

the disputes board's written findings of fact, conclusions of law, and decision; any written dissenting findings, recommendation, or opinions of a disputes board member; all submissions to the disputes board by the parties; and an independent engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications, or other determinations, if any, delivered to the parties pursuant to the CDA and related to the claim under consideration.

(9) Certain decisions, orders, or determinations of the executive director may be deemed to have been issued as of a certain date, or after a prescribed number of days, and setting out the parameters of the deemed decision, order, or determination.

(10) The parties are authorized and required to comply with all or certain categories of interim orders of the disputes board, including discovery and procedural orders.

(11) Except as agreed to by the parties in writing, a disputes board shall have no power to alter or modify any terms or provisions of the CDA, or to render any award that, by its terms or effects, would alter or modify any term or provision of the CDA. Notwithstanding the prior sentence, a disputes board decision that contains error in interpretation or application of a term or provision of the CDA but does not otherwise purport to alter or modify terms or provisions of the CDA may not be appealed on grounds of such error; and such error does not deprive the disputes board of power or authority over the claim.

(12) A developer's claim for termination compensation, or to enforce the department's security obligations that secure payment of termination compensation, is not to be resolved under any dispute resolution procedure in the CDA. Rather, a developer may exercise its rights under Transportation Code, §223.208(e) (relating to Terms of Private Participation) by seeking mandamus against the department.

(13) At all times during the processing of a contract claim, the developer and

its subcontractors shall continue with the performance of the work and their obligations, including any disputed work or obligations, diligently and without delay, in accordance with the CDA, except to the extent enjoined by order of a court or otherwise ordered or approved by the department in its sole discretion.

(f) Pass-through claim. A CDA may provide that a developer who is a party to a CDA with the department may make a claim on behalf of a subcontractor. In order to make such a claim the developer must be liable to the subcontractor on the claim.

(g) Mandatory requirements concerning disputes board. A CDA that authorizes the use of a disputes board shall include (or incorporate by reference) provisions substantially consistent with the provisions in this subsection.

(1) A disputes board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in the CDA, including, if applicable, any disputes board agreement.

(2) A disputes board member shall not have a financial interest in the CDA, in any contract or the facility that is the subject of the CDA, or in the outcome of any claim decided under the CDA, except for payments to that member for services on the disputes board. Any person appointed as a disputes board member shall disclose to the parties any circumstances likely to give rise to justifiable doubt as to such disputes board member's impartiality or independence, including any bias or any financial or personal interest in the result of the dispute resolution or any past or present relationship with the parties or their representatives, or developer's subcontractors and affiliates.

(3) The scope of a SOAH contested case hearing on an appeal of a disputes board decision is limited solely to whether disputes board error occurred.

(h) Punitive damages. A disputes board shall have no power or jurisdiction to award punitive damages.

(i) Permissive requirements concerning disputes board. A CDA that authorizes the use of a disputes board may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding the disputes board that are not contrary to the specific requirements of this section.

(1) Each party shall endeavor to have a standing list of candidates from which to select a disputes board member. The CDA may specify the qualifications to be a board member, the procedure by which a party nominates a person to the list of candidates, and the method by which the other party may review and object to a proposed candidate. All disputes board members are chosen from the list of candidates of the department or of the developer.

(2) A disputes board conducts its proceedings in accordance with procedural rules specified in the CDA. The disputes board may allow for discovery similar to that allowed under the Texas Rules of Civil Procedure, and the admission of evidence conforming to the Texas Rules of Evidence, but may allow for exceptions to or deviations from such requirements and rules.

(3) The parties may jointly modify the procedure applicable to the disputes board's proceedings, under the provisions of the CDA.

(4) During the period that a disputes board member is serving on a disputes board, neither party may communicate ex parte with that member. A party may not communicate ex parte with a person on its list of candidates to be a disputes board member regarding the substance of a dispute.

(5) Each party is responsible for paying one-half the costs of all facilities, fees, support services costs, and other expenses of a disputes board.

(6) A disputes board does not have the authority to order that one party compensate the other party for attorney's fees and expenses.

(j) Permissive requirements on a contested case hearing. A CDA that authorizes the use of a contract claim procedure authorized by this section may include (or incorporate by reference) any or all of the provisions in this subsection, or provisions substantially consistent with them, and other terms and conditions regarding a contested case hearing that are not contrary to the specific requirements of this section.

(1) The executive director's referral of a developer's request to SOAH for a contested case hearing as to whether a decision by a disputes board was affected by disputes board error is a purely ministerial act.

(2) If a determination is made after a contested case hearing that disputes board error occurred, the dispute shall be remanded to a disputes board for further consideration, except that if the error is lack of authority to hear the claim, the decision of the disputes board shall be vacated.

(3) The executive director's issuance of a final order following a contested case hearing is a purely ministerial act, and that if by inaction the executive director does not issue a final order within the time frame established by the CDA, then a final order in a form recommended by the administrative law judge shall be deemed to be automatically issued.

(4) As allowed by Government Code, §2001.144 and §2001.145, an order issued by the executive director after a contested case hearing is final on the date issued and no motion for rehearing is required to appeal the final order.

(5) An executive director's order remanding a dispute to a disputes board, or an executive director's order implementing a disputes board decision following a contested case hearing before SOAH, are subject to judicial review under Government Code, Chapter 2001, under the substantial evidence rule. Review is limited to whether disputes board error occurred.

(k) Other department rules on a contested case hearing.

(1) The parties may agree in the CDA to adopt, modify or not follow procedural provisions, deadlines, evidentiary rules, and any other matters set out in Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases).

(2) In the event of any conflict or difference between the procedures set out in this section or a CDA, and in Chapter 1, Subchapter E, the procedures in this section or the CDA shall govern with respect to any proceeding before SOAH.

(3) In the event of an appeal to SOAH of a disputes board decision:

(A) the department shall present a copy of this section to SOAH as a written statement of applicable rules or policies, under Government Code, §2001.058(c); and

(B) the parties shall request that the administrative law judge modify and supplement SOAH contested case procedures as necessary or appropriate, and consider this section, consistent with 1 TAC §155.3 (relating to Application and Construction of this Chapter).

(C) the parties shall provide the administrative law judge with a stipulation that the substantive provisions, scope of review, and procedural provisions of this section and the CDA shall apply to and govern the contested case proceeding before SOAH, consistent with 1 TAC §155.39(a) (relating to Stipulations).

(l) Mandamus relief. Nothing in this section shall restrict a developer's rights to seek mandamus relief pursuant to Government Code, §22.002(c) if the executive director fails to perform one or more of the ministerial acts set out in this section and included in the CDA as a ministerial act, or any other act specified in the CDA as a ministerial act.

(m) Confidential information.

(1) The parties may agree that, with respect to the mandatory informal dispute resolution process required under subsection (d)(2) of this section, communications

between the parties to resolve a dispute, and all documents and other written materials furnished to a party or exchanged between the parties during any such informal resolution procedure, shall be considered confidential and not subject to disclosure by either party.

(2) The parties may agree that with respect to a proceeding before the disputes board, an administrative hearing before an administrative law judge, or a judicial proceeding in court, either or both parties may request a protective order to prohibit disclosure to third persons of information that the party believes is a trade secret, proprietary, or otherwise entitled to confidentiality under applicable law.

EXHIBIT N

AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representatives:

Developer Authorized Representatives:

EXHIBIT O

Process for Determining Price and Verifying Price Reasonableness for Self-Performed Work

Pursuant to 23 CFR 636.302, certain conditions must be met before TxDOT may enter into a federally funded Facility Agreement that provides for self-performed Work, including a determination by TxDOT that the contract price for such Work is reasonable. This Exhibit O describes the planned process for making such determination and includes certain requirements to be satisfied by the Developer relating thereto. All references to self-performed Work in this Exhibit O shall include Work performed by an Affiliate, and all references to the Developer contained in this Exhibit O shall be deemed references to the Affiliate with regard to any Work to be performed by the Affiliate. The Developer shall be responsible for ensuring that its Affiliate complies with all requirements hereof.

A. Overview of Process

Once the scope of work, contract terms and necessary pricing assumptions are established, the Developer shall provide its proposed price for the self-performed Work, while TxDOT concurrently develops an estimate of a reasonable price. Each party will have the opportunity to review the other's price breakdown, and to advise the other party regarding any perceived errors. The Developer shall allow TxDOT to examine relevant books and records for the purpose of verifying the amounts proposed by the Developer.

The process for determining a price and verifying price reasonableness will include the following steps unless otherwise approved by TxDOT:

1. Parties establish scope of work and contract terms.

2. Parties establish assumptions relevant to pricing.

3. Developer provides price proposal; TxDOT concurrently estimates cost of performance of work, including:

   (a) price for design and construction of initial phase and any future construction work;

   - "base" price (generally based on estimated quantities, unit prices and markups for overhead and profit, and including a contingency for uncertainties in quantities due to preliminary level of design)

   - price for major risk items

   (b) land cost (if right-of-way acquisition is included in contract as a Developer expense);

(c) price for operations and maintenance services; and

(d) price for services not fitting into the above categories.

4. Parties meet to address differences, followed by preparation of a revised price proposal/estimate, and TxDOT review of books and records to verify basis for Developer's price.

[Steps 1 through 4 will be repeated as necessary.]

B. <u>Discussion</u>

Step 1: Establish scope of work and contract terms.

The pricing process will commence for self-performed Work once (a) a Facility Implementation Plan for such facility has been approved by TxDOT, (b) preliminary engineering has reached a minimum 20-30% level of completion, and (c) the key contract terms, requirements and conditions are determined. The parties will establish which elements of the preliminary design will be considered part of the contract, identify other specifications, standards, etc. that will govern the design and construction of the facility, and document the requirements in a written scope of work. TxDOT may conduct a value engineering review at this point and may modify the scope of work based on such review.

TxDOT and the Developer will hold one or more joint workshops to discuss the risks involved in developing the facility and to determine how they will be addressed. The workshops will involve the following:

- Identify risks likely to affect development of the facility and determine the type of impact associated with the risk
- Categorize risks based on probability of occurrence and severity of impact
- Develop strategies for managing risks and associated impacts
- Determine appropriate allocation of risk
- Identify cost drivers and develop strategies to address concerns

Through the workshop described above, the parties shall produce a risk matrix, based on a form provided by TxDOT. The matrix will, in turn, form the foundation for development of the contract terms and conditions.

Step 2: Establish assumptions relevant to pricing.

The parties shall mutually determine the categories of work to be performed and decide on a estimate form to be used by both parties.

The price shall include the following major components unless otherwise agreed by TxDOT:

- a lump sum amount for design and construction of initial phase and any future construction work, with major risk items priced separately from the "base" price, and possibly including unit prices or another form of compensation for specified elements of the work;
- land cost (if right-of-way acquisition is included in contract as a Developer expense);
- an amount for operations and maintenance services (if any); and
- an amount for other services (if any).

Each price element will be further divided into subcategories, similar to the line or pay items typically included on construction project bid sheets. The Developer's price must be based on the same underlying assumptions that are used by TxDOT.

(a) Assumptions for Design and Construction Price

(i) Base Price

The "base" amount for design, pre-construction services and construction of the facility shall be established based on estimated quantities, much like design-bid-build projects, except as otherwise approved by TxDOT. The pricing form shall identify which work items will be priced based on estimated quantities and which items must be priced on another basis.

The parties must agree on an approach for determining a reasonable markup for profit, taking into account the level and use of public resources. The Developer shall identify its proposed markups for overhead and profit and submit backup justifying the proposed markups which will be subject to review, evaluation and audit by TxDOT.

Escalation shall be factored into the pricing for any Work to be performed in future years, as agreed by the parties.

(ii) Price for Major Risk Items

A separate price will be established for each major risk category, except as otherwise approved by TxDOT. The categories to be priced separately could be identified as part of the risk workshop or could be established at the beginning of the pricing exercise.

If requested by the Developer, TxDOT will consider a different approach to pricing risk.

Due to the difficulties in quantifying risk, and the different estimating methodologies that will be used by the parties in pricing risk, it may not be possible to establish all of the assumptions relevant to pricing of risk in advance of starting the pricing exercise. The parties will, however, need to agree in advance upon the general approach to be used in pricing risk and discuss the issues associated with each risk, so as to allow a meaningful comparison of the Developer's price and TxDOT estimate.

(b) Assumptions for Land Cost

If the Facility Agreement gives the Developer responsibility for paying the land costs, the amount included on the price/estimate form would be based on the estimated cost for those parcels required for the footprint of the facility as shown on the preliminary design and for any anticipated mitigation parcels and other property needed in connection with development of the facility, with a contingency amount to cover any additional parcels that are needed as the design develops, and a contingency to cover changes in land value over the course of the acquisition process.

If TxDOT will pay for land costs directly, the pricing forms will not need to address land cost.

(c) Assumptions for O&M Costs

If the Facility Agreement includes responsibility for operations and maintenance (O&M) services, the process for determining price and verifying price reasonableness set forth in this Exhibit will apply to the O&M services as well as to other work. Accordingly, appropriate line items shall be included in the pricing forms and assumptions established regarding the scope of services associated with each line item. Such amounts may be provided in current dollars, with an escalation factor applied when the work is performed, to allow for changes in costs during the interim period. O&M costs may include capital asset replacement which would be estimated using the same process as for other design and construction work.

(d) Assumptions for Other Costs

Costs for services covered by the Facility Agreement that do not fit into any of the above categories must be identified on the pricing form and appropriate assumptions established, so as to allow them to be priced.

Step 3: Produce price/estimate.

Once the scope of work has been established and pricing assumptions set, the parties shall each proceed independently to determine an appropriate price for the work, filling in all blanks on the agreed-upon forms. The Developer shall use its standard estimating procedures to determine the amounts. TxDOT will develop its own estimating procedures.

(a) Design and Construction Price

(i) Base Price

With regard to items that the parties have agreed are suitable for unit pricing, each party will develop quantity estimates and determine appropriate unit prices for those quantities. Risk aspects not covered by separate risk pricing may be addressed by a markup applied to the "base" price.

If requested by TxDOT, the Developer shall submit cost projections and data justifying markups for overhead and profit incorporated into proposed unit prices. If the Developer has recently undergone a federal or state audit, TxDOT may agree to accept the federally or state approved markups for overhead and profit. Otherwise, Developer overhead rate will be determined from actual costs that the Developer is required to document. Developer overhead shall be limited to the actual administrative and supervisory expenses incurred by the Developer at the location where the work is performed. TxDOT shall have no obligation to pay for home office overhead, and the Developer shall not include home office overhead in its proposed overhead rate.

(ii) Price for Major Risk Items

Pricing for risk items will be determined as agreed by the parties. The contract may provide for separate funding for contingency or allowance items and/or other mechanisms for mitigating risk. In that case, the pricing will need to identify the estimated funding amount, and the basis for establishing that amount will be subject to review and negotiation on the same basis as other pricing.

(b) Land Cost

TxDOT may elect to have land costs determined based on a joint effort. If a decision is made to have each party provide separate cost estimates, they would be based on assumptions regarding right-of-way established as provided above.

(c) O&M Costs

Pricing for operations and maintenance will be provided using generally the same process as described above for design and construction costs.

(d) Other Costs

Pricing for any costs not fitting into the above categories will be provided in accordance with the assumptions for such items determined in Step 2 of the process.

Step 4: Trade pricing information and resolve differences

Once the Developer has determined a proposed price and TxDOT has developed a price estimate, the Developer and TxDOT will trade information. This step

may be conducted separately for different elements of the price, or could be conducted for combined price elements.

In addition to comparing the Developer's proposed price to the TxDOT estimate, TxDOT shall have the right to review, evaluate and audit the Developer's books, financial data, and other information relevant to the Developer's price. Information to be made available will include all pricing documentation, calculations, risk analyses, quantifications and other information the Developer uses to determine price. This "open book" evaluation will include review of the Developer's underlying assumptions and data associated with pricing, including assumptions as to schedule, composition of equipment spreads, equipment rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, as well as any other pricing documentation, calculations, risk analyses, quantifications and other information reasonably required by TxDOT to become satisfied that the Developer's assumptions and pricing are reasonable. The Developer will also have the opportunity to review TxDOT's estimate and to critique the underlying assumptions.

The integrity of the "open book" disclosure is important to the effectiveness of the price negotiation and to TxDOT's ability to determine that the price is reasonable. The Developer shall provide an affidavit to TxDOT certifying as to the completeness and accuracy of all pricing documentation and data it supplies to TxDOT, and affirming that the Developer has not engaged in collusive, price fixing, price gouging or other anti-competitive practices or activities in connection with pricing or contracting for development of the facility. TxDOT may also conduct an audit to verify that the Developer has made a complete and thorough disclosure of its books, records and information used in its pricing determination, including those relevant to risk assessment and mitigation.

An initial meeting may be advisable, prior to the "open book" review, to allow each party to explain the basis for pricing. The parties could also elect to revise their price/cost estimates based on these discussions, before proceeding with the open book review. After the open book review, the parties will meet again to discuss areas requiring revision. Each party will then repeat Step 3 to produce revised price/cost estimates based on the discussions. The parties may also decide to return to Step 1 and modify the scope of work or contract terms to obtain a better price, or could revise the assumptions developed in Step 3. The various steps of the process will be repeated until the parties reach agreement or conclude that it is no longer productive to proceed.

C. Additional Support and Documentation

The Developer shall provide such additional support and documentation as may be reasonably requested by TxDOT in connection with the price reasonableness determination, including providing backup documentation for any reports provided to FHWA relating thereto.

EXHIBIT P

FEDERAL REQUIREMENTS

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ATTACHMENT 1 TO EXHIBIT P

FEDERAL PROVISIONS

ATTACHMENT 1 TO EXHIBIT P

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL.—Certain 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 P. Whenever in said required contract provisions references are made to:

(a) "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean TxDOT or its Authorized Representative.

(b) “contractor”, “prime contractor”, “bidder” or “prospective primary participant”, such references shall be construed to mean Developer or its authorized representative and/or a Subcontractor or its authorized representative, as may be appropriate under the circumstances;

(c) “contract” or “prime contract”, such references shall be construed to mean the CDA or a Facility Agreement, as may be appropriate under the circumstances;

(d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant” or “lower tier subcontractor”, such references shall be construed to mean, as appropriate, Subcontractors; and

(e) “department”, “agency” or “department or agency entering into this transaction”, such references shall be construed to mean TxDOT, except where a different department or agency is specified.

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 Developer shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of $10,000 will be considered under the provisions of Section 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. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.—Part 26, Title 49, Code of Federal Regulations applies to the Initial Scope of Work and Facility work funded with Federal funds, and may at TxDOT's election apply to Facility work that is not funded with Federal funds. Pertinent sections of said Code are incorporated within other sections of the Contract and the TxDOT DBE Program (Exhibit K to the CDA).

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.

FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Attachment 2 to Exhibit P to the Agreement) are inapplicable to the Agreement.

ACCESS TO RECORDS

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

years after final payment is made pursuant to any such contract and all other pending matters are closed.

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

ATTACHMENT 2 TO EXHIBIT P

FHWA FORM 1273

ATTACHMENT 2 TO EXHIBIT P

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. Contractors 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 a 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. Contractors 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 that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked 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 Contractor 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.

2. 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.

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the 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 participant 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 Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting 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.

ATTACHMENT 3 TO EXHIBIT P

EQUAL EMPLOYMENT OPPORTUNITY

ATTACHMENT 3 TO EXHIBIT P

EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION
000---001
Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

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:

- Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- 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
- 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).

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.

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 Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown 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 Hometown 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 Hometown 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 Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

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.

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.

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.

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 contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the contractor'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 community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

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 contractor’s EEO policy and the contractor's obligations under these specifications are being carried out.

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

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

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

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

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

The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

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

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

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.

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.

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).

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 4 TO EXHIBIT P

AFFIRMATIVE ACTION

ATTACHMENT 4 TO EXHIBIT P

AFFIRMATIVE ACTION

SPECIAL PROVISION
000--1981
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 contractor's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

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.

Subcontracting.

The contractor shall provide written notification to TxDOT within ten Business 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 TxDOT 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.

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.

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

County	Goals for Minority Participation	County	Goals for Minority Participation
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9

Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

County	Goals for Minority Participation	County	Goals for Minority Participation
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		

County	Goals for Minority Participation	County	Goals for Minority Participation
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 5 TO EXHIBIT P

OPTIONAL TRAINING

<u>**ATTACHMENT 5 TO EXHIBIT P**</u>

SPECIAL PROVISION
000-3487

OPTIONAL TRAINING
1993 Specifications

This Optional Training Special Provision supersedes Section 7.e. of Special Provision entitled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" and supersedes Section II.6.b. of the required contract provisions, Federal-Aid Construction Contracts (Form FHWA 1273).

As part of the Contractor's equal employment opportunity/affirmative action program, the Contractor may elect to provide training under this Special Provision as follows:

The Contractor shall submit in writing to the Contract Compliance Section of the Office of Civil Rights of the Texas Department of Transportation (hereinafter referred to as "OCR") at 125 East 11th, Riverside, Austin, Texas 78701-2483, notice of its intent to provide training under this Special Provision. The training shall be for the purpose of developing women, blacks and others (others identified as American Indian, Alaskan Native, Asian or Pacific Islander) in the "critical crafts" designated annually by the Department. A critical craft is defined as a journeyman level job classification with 30 or more employees statewide where underrepresentation of minorities and women exists in relation to their availability in the State of Texas. Below is a list of job classifications which fall under the critical craft definition:

Blacks	Other	Women
Mechanics	Equipment Operators	All Classifications
Equipment Operators	Iron Workers	
Truck Drivers	Carpenters	
Carpenters	Cement Masons	
Pipe fitters, Plumbers	Painters	

A Contractor may elect to train in crafts other than those identified as critical crafts in the Special Provision but will require approval of OCR. The Contractor must submit evidence (i.e. FHWA 1391 or equivalent) demonstrating that underutilization of the above referenced minorities and/or women exists in other skilled job classifications within its work force in the entire State of Texas or on the project site covered by this contract agreement. Training will only be allowed in those crafts/classifications identified in the wage determination found in the contract and which have journeyman level status. OCR approval will be required for training in any other classification. In the event the Contractor subcontracts a portion of the work, the Contractor may not further assign a portion of the training requirements established herein without written approval of the subcontractor(s) and OCR. If the request is approved, an Optional Training

Special Provision must be referenced in the subcontract agreement(s) and physically attached thereto.

The Contractor's written notice to provide training shall include a training schedule. The training schedule shall identify the training program to be used in fulfilling the training requirements. Only training programs approved by:

* the U.S. Department of Labor
* a state apprenticeship agency or council recognized by the Department of Labor, or
* OCR with FHWA's concurrence

may be used to fulfill training requirements. Furthermore, the training schedule shall specify:

* the job classifications in which training will be provided
* the number of trainees in each job classification
* the anticipated starting time of the training in each classification, and
* the schedule for training in each of the on-the-job training classifications to be used.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The Contractor, upon the start of training, shall provide OCR with two (2) copies of the following registration information for each trainee:

Name
Address
Telephone Number
Social Security Number
Race/Ethnic Origin
Gender
Classification to be trained in
Status in training program (first half, third quarter, last quarter)
Date training will begin
Classification(s) previously trained in and date training completed.

The registration information provided must be signed by the Contractor and the trainee. With their signatures, the Contractor and the trainee certify the accuracy of the registration information provided and that the trainee has received a copy of the training program to be used. No employee shall be hired as a trainee in any classification in

which the employee has successfully completed a training course leading to journeyman level status or in which the employee has been hired at the journeyman level. Trainees will be paid at least 60 percent of the appropriate minimum journeyman level rate specified in the contract for the first half of the training period, at least 75 percent for the third quarter of the training period, and at least 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the U.S. Department of Labor or OCR in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by the Training Special Provision. Except as otherwise noted below, the Contractor will be reimbursed $2 for each hour of training provided to women and minorities in compliance with the terms of this Special Provision. This reimbursement may be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for off-site training may be made only if:

* the approved training program being used by the Contractor includes provisions for off-site training,
* the trainees are concurrently employed on a Federal-Aid project,
* the Contractor contributes to the cost of the training, and
* provides the instruction to the trainees or pays the trainees' wages during the off-site training.

Failure to submit the training schedule will negate eligibility for reimbursement of the $2 per hour for training provided to women and minorities. No retroactive reimbursement payments will be made.

OCR shall verify the training information submitted by the Contractor. Upon verification of the training hours completed on the project by OCR, payment for training will be made to the Contractor on the Final Pay Estimate. The Contractor will submit to OCR and to the Area Engineer, copies of weekly progress reports for each trainee to monitor compliance with this Special Provision. These weekly progress reports must contain the following information for each trainee:

Name
Social Security Number
Job Classification with specific classification number
Name of Contractor providing training
County the project is located in
Project Number
Control/Section/Job (CSJ) Number
Hours trained this week
Work week ending date

Cumulative total of trained hours to date
Date training began
Graduate date of trainee
Termination date of trainee
Reason of termination with details explaining termination
Wage Rate at termination
Transfer to another project
Project Number of transferred project
County of transferred project
Signature of training coordinator representing the Contractor

During periods of inactivity, the Contractor shall submit weekly reports which indicate that there was no training during the period. Failure to submit required training documentation may result in the withholding of the monthly or Final Pay Estimate until all of the required training documentation has been submitted and verified by OCR.

The Contractor shall provide a wallet-size identification card to each trainee who successfully graduates from the training program. The identification card should contain, at a minimum, the following information:

Optional On-The-Job Training Program
Trainee's Name and Social Security Number
Job Classification(s)
Date(s) of enrollment and graduation, and a statement detailing the trainee's successful completion of training toward journeyman.

ATTACHMENT 6 TO EXHIBIT P

DEBARMENT AND SUSPENSION CERTIFICATION

1. By signing and submitting its proposal or bid, and by executing the CDA or a Subcontract, each prospective Developer and Subcontractor (at all tiers) shall be deemed to have signed and delivered the following certification:

The undersigned 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 Developer or Subcontractor is unable to certify to any of the statements in this certification, such Person shall attach a certification to its proposal or bid, or shall submit it with the executed CDA or Subcontract, stating that it is unable to provide the certification and explaining the reasons for such inability.

ATTACHMENT 7 TO EXHIBIT P

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the

undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

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

NOTE: DEVELOPER AND EACH SUBCONTRACTOR IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS OVER $100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID $100,000 OR MORE.