FORM A-1

TECHNICAL PROPOSAL LETTER

PROPOSER: \_\_\_\_\_\_\_\_

Technical Proposal Date: \_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Texas Department of Transportation

7600 Chevy Chase Drive, Building 2, 4th Floor

Austin, Texas 78752

Attn: Mr. Dieter Billek, P.E.

The undersigned (“**Proposer**”) submits this detailed technical proposal (this “**Technical** **Proposal**,” and together with the Financial Proposal to be submitted on or before the Financial Proposal Due Date, the “**Proposal**”) in response to that certain Request for Proposals (the “**RFP**”) issued by the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas, dated January 31, 2014, as amended, to develop, design, construct, finance, operate and maintain the TxDOT Toll Lanes Project in Harris County (the “**Project**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for TxDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider the Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally,” and delete the brackets; otherwise delete the entire phrase]:*

a) to keep the Proposal open for acceptance initially for 210 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf the Proposal is submitted, without first obtaining the prior written consent of TxDOT, in TxDOT’s discretion; and

b) if the Proposal is accepted, to provide security for the due performance of the Comprehensive Development Agreement (“**CDA**”) as stipulated in the CDA and the RFP.

If selected by TxDOT, Proposer agrees to do the following or to cause Developer to do the following: (a) if requested by TxDOT in its discretion, enter into good faith negotiations with TxDOT regarding the terms of the CDA, in accordance with the requirements of the RFP; (b) enter into the CDA without varying or amending its terms (except for modifications agreed to by TxDOT in its discretion), and satisfy all other conditions to award of the CDA; and (c) perform its obligations as set forth in the ITP and CDA, including compliance with all commitments contained in this Proposal.

The following individual is designated as Proposer’s designated representative in accordance with Section 2.2.2 of the ITP:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Enclosed, and by this reference incorporated herein and made a part of this Technical Proposal, are the following:

* Executive Summary
* Technical Proposal, including Proposer Information, Certifications and Documents

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

[*List all Addenda by number and date issued. For example, “Addendum No. 1 issued February 10, 2014”*]

[*List dates on which TxDOT responded to Proposers’ questions regarding the RFP Documents or this procurement.*]

Proposer certifies that its Technical Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda (if any) and TxDOT’s responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by Developer and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Technical Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Technical Proposal; and that it has notified TxDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the QS previously delivered to TxDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Technical Proposal and Technical Proposal forms. Proposer agrees that such QS, except as modified by the enclosed Technical Proposal and Technical Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that TxDOT is not bound to accept the Proposal offering the highest payment to TxDOT, requesting the least public funds or any Proposal TxDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing the Proposal and participating in the RFP process will be borne solely by Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer consents to TxDOT’s disclosure of its Proposal pursuant to Section 223.204(a), Texas Transportation Code, to any Persons in TxDOT’s discretion after Conditional Award. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6. Proposer expressly waives any right to contest such disclosures under Texas Transportation Code Section 223.204(a).

Proposer agrees that TxDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal.

The Proposal shall be governed by and construed in all respects according to the laws of the State of Texas.

Proposer’s business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization:

*[Insert appropriate signature block from following page. Note: signatures should be in* ***blue*** *ink. Evidence of signature authorization for all individuals executing Proposal forms must be attached.]*

1. Sample signature block for corporation or limited liability company:

[*Insert Proposer’s name*]

By:

Print Name:

Title:

2. Sample signature block for partnership or joint venture:

[*Insert Proposer’s name*]

By: [*Insert general partner’s or member’s name*]

By:

Print Name:

Title:

[*Add signatures of additional general partners or members as appropriate*]

*3.* Sample signature block for attorney in fact:

[*Insert Proposer’s name*]

By:

Print Name:   
 Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH TECHNICAL PROPOSAL LETTER:

A. Describe in detail the legal structure of Proposer/Developer and Equity Members. If any entity is not yet formed or if a modification is contemplated prior to award, so state and provide a brief description of the proposed legal structure of each such entity.

1. If Proposer/Developer/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for Proposer/Developer and each corporation certified by an appropriate individual. If any entity is not yet formed or if a modification to existing articles of incorporation and/or bylaws is contemplated prior to award, so state, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.

2. If Proposer/Developer/Equity Member is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, so state, indicate that these documents will be provided for such entity prior to award and provide applicable draft documents for each such entity.

3. If Proposer/Developer/Equity Member is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, so state, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.

4. If Proposer/Developer/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, so state, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.

B. Attach evidence to the Technical Proposal that the person(s) signing the Technical Proposal Letter has (or have) authority to do so and that execution and delivery of the Technical Proposal is authorized and the Technical Proposal is valid. If Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If Proposer is a joint venture or a partnership, the Technical Proposal must be executed by all joint venture members or all general partners, as applicable.

C. Developer’s organizational documents, including an agreement to which all equity owners, either directly or through intermediaries, are a party (partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable), must include an express provision satisfactory to TxDOT, in its discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposer shall submit the applicable organizational documents (or draft organizational documents if Developer is not yet formed) and identify on a cover page where in the agreement the provision can be found. If Developer is wholly owned by a single entity but has more than one equity owner through one or more intermediaries, Proposer shall submit organizational documents for Developer, the entity that is directly held by the ultimate equity owners of Developer and for each intermediary. For purposes of this paragraph C, the term “equity member” shall mean any entity having a direct or indirect through intermediaries equity interest in Developer of at least 10%.

FORM A-2

FINANCIAL PROPOSAL LETTER

PROPOSER: \_\_\_\_\_\_\_\_

Financial Proposal Date: \_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Texas Department of Transportation

7600 Chevy Chase Drive, Building 2, 4th Floor

Austin, Texas 78752

Attn: Mr. Dieter Billek, P.E.

The undersigned (“**Proposer**”) submits this detailed financial proposal (this “**Financial Proposal**,” and together with the Technical Proposal submitted on [\_\_\_], 2015, this “**Proposal**”) in response to that certain Request for Proposals (the “**RFP**”) issued by the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas, dated January 31, 2014, as amended, to develop, design, construct, finance, operate and maintain the TxDOT Toll Lanes Project in Harris County (the “**Project**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for TxDOT supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally,” and delete the brackets; otherwise delete the entire phrase]:*

a) to keep this Proposal open for acceptance initially for 210 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of TxDOT, in TxDOT’s discretion; and

b) if this Proposal is accepted, to provide security for the due performance of the Comprehensive Development Agreement (“**CDA**”) as stipulated in the CDA and the RFP.

If selected by TxDOT, Proposer agrees to do the following or to cause Developer to do the following: (a) if requested by TxDOT in its discretion, enter into good faith negotiations with TxDOT regarding the terms of the CDA, in accordance with the requirements of the RFP; (b) enter into the CDA without varying or amending its terms (except for modifications agreed to by TxDOT in its discretion), and satisfy all other conditions to award of the CDA; and (c) perform its obligations as set forth in the ITP and CDA, including compliance with all commitments contained in this Proposal.

The following individual is designated as Proposer’s designated representative in accordance with Section 2.2.2 of the ITP:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Proposer incorporates into this Proposal by reference, the Technical Proposal submitted by Proposer on [\_\_\_], 2015. In addition, enclosed, and by this reference incorporated herein and made a part of this Proposal, is the Financial Proposal, including the Proposal Security.

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

[*List all Addenda by number and date issued. For example, “Addendum No. 1 issued February 10, 2014”*]

[*List dates on which TxDOT responded to Proposers’ questions regarding the RFP Documents or this procurement.*]

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda (if any) and TxDOT’s responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by Developer and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal; and that it has notified TxDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the QS previously delivered to TxDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such QS, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that TxDOT is not bound to accept the Proposal offering the highest payment to TxDOT, requesting the least public funds or any Proposal TxDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer consents to TxDOT’s disclosure of its Proposal pursuant to Section 223.204(a), Texas Transportation Code, to any Persons in TxDOT’s discretion after Conditional Award. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6. Proposer expressly waives any right to contest such disclosures under Texas Transportation Code Section 223.204(a).

Proposer agrees that TxDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Texas.

Proposer’s business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization:

*[Insert appropriate signature block from following page. Note: signatures should be in* ***blue*** *ink. Evidence of signature authorization for all individuals executing Proposal forms must be attached.]*

1. Sample signature block for corporation or limited liability company:

[*Insert Proposer’s name*]

By:

Print Name:

Title:

2. Sample signature block for partnership or joint venture:

[*Insert Proposer’s name*]

By: [*Insert general partner’s or member’s name*]

By:

Print Name:

Title:

[*Add signatures of additional general partners or members as appropriate*]

*3.* Sample signature block for attorney in fact:

[*Insert Proposer’s name*]

By:

Print Name:   
 Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH FINANCIAL PROPOSAL LETTER:

A. Attach evidence to the Proposal that the person(s) signing the Financial Proposal Letter has (or have) authority to do so and that execution and delivery of the Proposal (including both the Financial Proposal and the Technical Proposal) is authorized and the Proposal is valid. If Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

FORM B-1

**IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS**

|  |  |  |
| --- | --- | --- |
| **NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, email)** | **ROLE IN ORGANIZATION** | **Description of Work/Services To Be Performed by Entity (if applicable)** |
|  |  |  |
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|  |  |  |

The above information is true, correct and accurate.

[Insert Proposer’s name]

By:   
Name: \_\_\_\_\_\_  
Title:

FORM B-2

**INFORMATION ABOUT PROPOSER ORGANIZATION**

1. Name of Proposer:   
Name of Developer:

2. Type of entity: Proposer:   
 Developer:

3. Proposer’s address:   
  
   
  
   
  
 Telephone Facsimile

4. How many years has Proposer, Developer and each Equity Member been in its current line of business, and how many years has each entity been in business under its present name?

|  |  |  |
| --- | --- | --- |
| Name | No. of years in business | No. of years under present name |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

5. Under what other or former names have Proposer, Developer and Equity Members operated?

|  |  |  |
| --- | --- | --- |
| Proposer: |  |  |
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|  | : |  |
|  | : |  |
|  | : |  |
|  | : |  |

6. Proposer shall review its QS previously submitted to TxDOT and list below any Key Personnel and other key staff members and their relevant experience that have been approved by TxDOT since the submission of the QS. Except as updated by the following information, Proposer’s QS is hereby incorporated as if set forth in full and Proposer represents and warrants to TxDOT that the information set forth in the QS, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

7. List all Texas professional licenses held by Proposer, Developer and any Equity Members. Attach copies of all Texas licenses. Attach a separate sheet if necessary.

8. The Proposal shall include the following information regarding the Surety/Bonding companies committing to provide the Payment and Performance Bonds in accordance with CDA Section 26.2:

(a) Name(s), address(es) and phone number(s) of the Surety(ies) that will provide the above-referenced surety bonds (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, Inc.), and the name(s), address(es) and phone number(s) of the designated agent(s).

(b) Whether or not each listed Surety has defaulted on any obligation within the past ten years, and, if so, a description of the circumstances and the outcome of such default.

STATE OF )  
 )  
COUNTY OF )

Each of the undersigned, being first duly sworn, deposes and says that                      is the                      of                      and                      is the                      of                     , which entity(ies) are the                      of                     , the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

|  |  |
| --- | --- |
|  |  |
| (Signature) | (Signature) |
|  |  |
| (Name Printed) | (Name Printed) |
|  |  |
| (Title) | (Title) |

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2014.

Notary Public in and for  
 said County and State

[Seal]

My commission expires:

FORM B-3  
  
INFORMATION ABOUT MAJOR PARTICIPANTS, MAJOR PROFESSIONAL SERVICES FIRMS AND IDENTIFIED SUBCONTRACTORS

[*This form will be used to provide information about any Major Participants (excluding Equity Members that do not fall into categories (a) through (g) of the definition of Major Participants) and Major Professional Services Firms and any other subcontractors that have been identified as of the Technical Proposal Due Date.*]

Proposer Name

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Entity Name / Contact** | **Address of Head Office** | **Telephone / Fax** | **Specialty / Assignment** | **Subcontractor / Major Participant** |
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Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants and/or Major Professional Services Firms resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. Proposer agrees that it will follow applicable CDA requirements with respect to Subcontractors. Proposer further declares that it has carefully examined the RFP Documents and acknowledges that TxDOT has determined that a Proposer’s efforts to obtain participation by Subcontractors could reasonably be expected to produce 12% DBE participation for the professional services and construction portions of the Work.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true and correct.

Executed: , 2014.

(Signature)

(Name printed)

(Title)

(Signature)

(Name printed)

(Title)

(Proposer)

STATE OF )  
 )  
COUNTY OF )

Each of the undersigned, being first duly sworn, deposes and says that                      is the                      of                      and                      is the                      of                     , which entity(ies) are the                      of                     , Proposer identified in the foregoing questionnaire, and that the answers to the foregoing questions and all other statements therein are true and correct.

|  |  |
| --- | --- |
|  |  |
| (Signature) | (Signature) |
|  |  |
| (Name Printed) | (Name Printed) |
|  |  |
| (Title) | (Title) |

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2014.

Notary Public in and for  
 said County and State

[Seal]

My commission expires:

**FORM B-4  
  
KEY CONTRACTORS**

**Name of Proposer:**

**List of Key Contractors by discipline or role:**

FORM C   
  
RESPONSIBLE PROPOSER QUESTIONNAIRE

PROPOSER’S NAME:

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Questions

Proposer/Equity Member shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. For Proposer, the term “**affiliate**” shall mean Developer, any Equity Member or any entity which owns a substantial interest in or is owned in common ownership with Proposer, Developer or any Equity Member, or any such entity in which Proposer, Developer or any Equity Member owns a substantial interest. For all other entities providing this form, the term “**affiliate**” shall mean the entity signing the form, any entity which owns a substantial interest in or is owned in common with the entity signing the form, or any entity in which the entity signing the form owns a substantial interest.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes \_\_\_\_\_ No \_\_\_\_\_

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Texas governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Texas law.

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Texas Department of Labor (or its equivalent), federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

h) Been assessed liquidated or other damages for failure to complete any contract on time?

If yes, please explain the circumstances. If no, so state.

Yes \_\_\_\_\_ No \_\_\_\_\_

Explain the circumstances underlying any “yes” answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry.

Executed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

[*Evidence of signature authorization for such individual must be provided with the Proposal Letter*]

FORM D  
  
PERSONNEL WORK ASSIGNMENT FORM

**Name of Proposer:**

**Key Personnel Assignment Name of Individual Assigned**

|  |  |
| --- | --- |
| Project Manager\* |  |
| Financial Manager |  |
| Public Information Coordinator |  |
| Design Manager\* |  |
| Superintendent or Construction Manager\* |  |
| Lead Quality Manager\* |  |
| Environmental Compliance Manager\* |  |
| Safety Manager\* |  |
| Operations Manager or O&M Manager\* |  |
| Maintenance Manager or O&M Manager\* |  |

*\* Key Personnel position was previously identified in the RFQ.*

FORM E  
  
NON-COLLUSION AFFIDAVIT

STATE OF )

)

COUNTY OF )

Each of the undersigned, being first duly sworn, deposes and says that:

A. \_\_\_\_\_\_\_\_\_\_ is the \_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_ (the “Entity”) which entity is the \_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or a sham; Entity has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Entity has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against TxDOT or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Entity has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Entity will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

|  |  |
| --- | --- |
| (Signature) | (Signature) |
| (Name Printed) | (Name Printed) |
| (Title) | (Title) |

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014.

Notary Public in and for said County and State

[Seal]

My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*[Duplicate or modify this form as necessary so that it accurately describes the entity submitting the affidavit. Each member of the Proposer team shall submit an executed Form E.]*

FORM F  
  
BUY AMERICA CERTIFICATION

(To be signed by authorized signatory(ies) of Developer)

The undersigned certifies on behalf of itself and all proposed subcontractors that only domestic steel and iron will be used in the Project.

1. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.
2. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this CDA be investigated, Proposer has the burden of proof to establish that it is in compliance.
3. At Proposer’s request, TxDOT may, but is not obligated to, see a waiver of Buy American requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy American requirements if a waiver of those requirements is not available or not pursued by TxDOT.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014

Signature

Title

FORM G  
  
DBE CERTIFICATION

Control

Project

Highway

County

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work under the Comprehensive Development Agreement (“CDA”):

DBE

12%

DBE Certification

By signing the Proposal, Proposer certifies that (1) the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that Developer will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the CDA, Developer will submit a DBE Performance Plan meeting the requirements set forth in the DBE Special Provisions attached as Exhibit 13 to the CDA.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Security provided by Proposer will become property of the Department and Proposer will be precluded from participating in any reprocurement of the CDA for the project.

[name]

[title]

FORM H  
  
CHILD SUPPORT STATEMENT FOR   
STATE GRANTS, LOANS AND CONTRACTS

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Proposer Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

List below the name and social security number of the individual or sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25% of the entity identified below.

Section 231.006, Family Code, specifies that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Section 601-617 and 651-669).

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014

Company Name:

Signature

Title

[*Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of Proposer and each Major Participant*.]

FORM I  
  
CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer’s attention is directed to 23 CFR Part 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines “organizational conflict of interest” as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that in accordance with TxDOT’s Conflicts of Interest Policy, certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with TxDOT in connection with the Project procurement and document preparation and the CDA program.

**1. Disclosure Pursuant to Section 636.116(2)(v)**

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present or planned interest(s) of Proposer’s team (including Proposer, Developer, the Major Participants, proposed consultants and proposed subcontractors and their respective chief executives, directors and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Proposer should disclose (a) any current contractual relationships with TxDOT, (b) any past, present or planned contractual or employment relationships with any TxDOT member, officer or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any TxDOT member, officer or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer’s team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

**2. Explanation**

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

**3. Certification**

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

, 2014  
Date

FORM J-1  
  
PRICE PROPOSAL

**Proposer Name:**

Provide the Concession Payment in nominal U.S. dollars, rounded to the nearest dollar, in Box 1(a), payable pursuant to the terms set forth in Section 4.1 of the CDA. Provide the net present value of such Concession Payment as of the Financial Proposal Due Date, calculated at a 5% discount rate assuming a Financial Close Date of 300 days after the Financial Proposal Due Date, in Box 1(b). See Exhibit C, Section 7 for additional explanation and requirements. If Public Funds Payments are required, indicate $0 for the Concession Payment (or an equivalent expression).

**Box 1**

|  |  |
| --- | --- |
| 1. **Concession Payment** | $\_\_\_\_\_\_\_\_\_\_\_\_ |
| 1. **Net Present Value of Concession Payment** | $\_\_\_\_\_\_\_\_\_\_\_\_ |

Provide any Public Funds Payments that are required, each in nominal U.S. dollars, rounded to the nearest dollar, in Box 2, payable pursuant to the terms set forth in Section 4.6 of the CDA. Such payments should be indicated as negative numbers. Also provide the net present value of such payments, calculated at a 5% discount rate as of the Financial Proposal Due Date, in Box 3. See Exhibit C, Section 7 for additional explanation and requirements. Multiple Public Funds Payments may be requested; provided, however that the last date for payment must be no later than the date of Substantial Completion for the last Project Segment. Include as many rows as necessary to reflect the number of Public Funds Payments required. Do not include the TMC Public Funds Payment in the chart. If no such payments are required, indicate so by listing “None” (or an equivalent expression).

**Box 2**

|  |  |
| --- | --- |
| **Public Funds Payment** | **Payable Not Prior To** |
| **[*Insert amount of payment*]**  $\_\_\_\_\_\_\_\_\_\_\_\_ | **[*Insert earliest payment date*]**  \_\_\_\_ months after NTP2 |
| **[*Insert amount of payment*]** | **[*Insert payment date*]** |

**Box 3**

|  |  |
| --- | --- |
| **Net Present Value of Public Funds Payments** | – $\_\_\_\_\_\_\_\_\_\_\_\_ |

**FORM J-2  
  
PRICE PROPOSAL  
(ALLOCATION OF REVENUE PAYMENT FOR FEDERAL INCOME TAX)**

**Proposer Name:**

Provide the allocation of Revenue Payment between the right to toll Toll Lanes and rent for the Project Right of Way in Box 1. Such allocation will be included in Section 4.2.3 of the CDA.

**Box 1**

|  |  |
| --- | --- |
| **Right to toll the Toll Lanes** | \_\_\_% |
| **Rent for the Project Right of Way** | \_\_\_% |

**FORM J-3**

**PRICE PROPOSAL  
(GENERAL PURPOSE LANE CAPACITY IMPROVEMENT PAYMENTS)**

**Table A  
GPLCI Payment: Component A**

|  |  |  |
| --- | --- | --- |
| **Component A** | **Amount** | |
| The initial lump-sum, fixed-price amount for the GPLCI Design-Build Contract, which amount is subject to adjustment pursuant to Section 25.1.7(c) of the CDA | |  | |

**Table B  
GPLCI Payment: Component B**

|  |  |
| --- | --- |
| **Component B** | **Amount** |
|  |  |

FORM K-1  
  
PROPOSAL BOND

**Bond No.** \_\_\_\_\_\_

**STATED EXPIRATION DATE:** August 28, 2015 ***[Note: This date is 220 days after the Financial Proposal Due Date.]***

**KNOW ALL PERSONS BY THESE PRESENTS,** that the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*NOTE: insert name of Proposer as the Principal and delete this bracketed text*]**,as Principal and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation (“TxDOT”), in the sum of $10,000,000 (the “Bonded Sum”).

**WHEREAS**, the Principal is herewith submitting its Proposal for furnishing the development, design and construction of the TxDOT SH 288 Toll Lanes Project in Harris County, which Proposal is incorporated herein by this reference and has been submitted pursuant to TxDOT’s Request for Proposals dated as of \_\_\_\_\_\_\_\_\_ (as amended or supplemented, the “RFP”), in accordance with the Instructions to Proposers thereto (“ITP”) included in the RFP, to develop, design, construct, finance, operate and maintain the TxDOT SH 288 Toll Lanes Project in Harris County through a Comprehensive Development Agreement (the “CDA”);

**NOW, THEREFORE**,

1. The condition of this Proposal Bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to TxDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the “Co-Sureties”) of notice of such forfeiture by TxDOT:

(a) Principal's receipt of written notice from TxDOT that either (i) no CDA for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT has awarded the CDA for the Project, has received the executed CDA and other required documents, and does not intend to award the CDA to Principal; or

(b) If TxDOT has not previously delivered notice of forfeiture hereunder, failure of TxDOT to conditionally award the CDA to Principal within 210 days (or 270 days if TxDOT has extended the 210 day period to 270 days pursuant to the terms of the ITP) after the Financial Proposal Due Date.

2. The Principal agrees to pay to TxDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

(a) Principal withdraws all or any part of its Proposal prior to 210 days following the Financial Proposal Due Date, without TxDOT’s consent, except as specifically permitted in the ITP; or

(b) Principal is selected for negotiations and fails to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1 or fails to deliver Closing Security as set forth in ITP Section 5.12.2(c); or

(c) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the CDA under the ITP without TxDOT’s consent (after receiving Conditional Award).

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

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

(a) The ITP is incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the ITP.

(b) This Proposal Bond shall not be subject to forfeiture in the event that TxDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.

(c) If suit is brought on this Proposal Bond by TxDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by TxDOT in bringing such suit, including, without limitation, reasonable attorneys’ fees and costs as determined by the court.

(d) Any extension(s) of the time for award of the CDA that Principal may grant in accordance with the CDA or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.

(e) Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address:

**SIGNED and SEALED** this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014

Principal

By:

Co-Surety

By:

          Attorney in Fact

By:

Co-Surety

By:

          Attorney in Fact

By:

       Co-Surety

By:

          Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

|  |  |  |
| --- | --- | --- |
| SURETY NAME | SURETY ADDRESS | INCORPORATED IN |

FORM K-2  
  
PROPOSAL LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

**ISSUER:**

**PLACE FOR PRESENTATION OF DRAFT: [Name and Address of Bank/Branch]**

**APPLICANT:**

**BENEFICIARY:** Texas Department of Transportation

7600 Chevy Chase Drive,

Building 2, 4th Floor,

Austin, Texas 78752

**LETTER OF CREDIT NUMBER:**

**PLACE AND DATE OF ISSUE:**

**AMOUNT:** $10,000,000

**STATED EXPIRATION DATE:** August 28, 2015 ***[Note: This date is 220 days after the Financial Proposal Due Date.]***

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of TxDOT, for the amount of $10,000,000, available by draft at sight drawn on the Issuer. Any draft under this Credit shall be in the amount of $10,000,000 and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and

2. Be accompanied by the Beneficiary’s signed and dated statement stating one of the following:

(a) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s withdrawal of all or any part of its Proposal prior to 210 days following the Financial Proposal Due Date, without TxDOT’s consent, except as specifically permitted under the ITP.”

or

(b) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_’s failure to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1 or \_\_\_\_\_\_\_\_\_’s failure to deliver Closing Security as required by ITP Section 5.12.2(c).”

or

(c) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s withdrawal, repudiation or other indication that it will not meet any commitments made in its Proposal prior to the time allowed for TxDOT’s execution of the CDA (after receiving Conditional Award).”

All drafts will be honored if presented to (Bank/Branch - Name & Address) on or before the Stated Expiration Date described above.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central time, on any weekday (i.e., Monday through Friday, excluding Texas state holidays and U.S. federal holidays (a “Business Day”), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, local time of the location of the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution:

Routing Number:

Account Name:

Account Number to Credit:

Reference:

Attention:

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

The Instructions to Proposers (the “ITP”) is incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the ITP. For the avoidance of doubt, any reference to the ITP within this Letter of Credit is for informational purposes and in no way obligates [name of issuing bank] in accordance with the ITP terms nor is the document to be examined for compliance purposes.

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

This Letter of Credit is issued under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, including the Uniform Commercial Code, Chapter 5, Texas Business and Commerce Code, without regard to principles of conflicts of law.

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

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to Texas courts and law.

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

Issuer:

By:

(Authorized signature of Issuer)

FORM K-3  
  
CLOSING BOND

**Bond No.** \_\_\_\_\_\_

**STATED EXPIRATION DATE:** November 26, 2015 ***[Note: This date is ten days after the Financial Close Deadline]***

**KNOW ALL PERSONS BY THESE PRESENTS,** that the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[*NOTE: insert name of Proposer as the Principal and delete this bracketed text*]**,as Principal and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation (“TxDOT”), in the sum of $30,000,000 (the “Bonded Sum”).

**WHEREAS**, the Principal has submitted its Proposal for furnishing the development, design and construction of the TxDOT SH 288 Toll Lanes Project in Harris County, which Proposal is incorporated herein by this reference and has been submitted pursuant to TxDOT’s Request for Proposals dated as of January 31, 2014 (as amended or supplemented, the “RFP”), in accordance with the Instructions to Proposers thereto (“ITP”) included in the RFP, to develop, design, construct, finance, operate and maintain the TxDOT SH 288 Toll Lanes Project in Harris County through a Comprehensive Development Agreement (the “CDA”);

**WHEREAS,** the Principal was selected as the preferred Proposer to enter into the CDA;

**NOW, THEREFORE**,

1. The Principal agrees to pay to TxDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days of any of the following events:

(a) After receiving Conditional Award, Principal fails to execute and deliver to TxDOT the CDA and all other documents required under ITP Section 6.1 by the deadline set forth in ITP Section 1.6.2, without excuse under ITP Section 4.8.2; or

(b) Principal’s withdrawal of all or any part of its Proposal prior to 210 days following the Financial Proposal Due Date, without TxDOT’s consent, except as specifically permitted in the ITP; or

(c) Principal is selected for negotiations and fails to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1; or

(d) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the CDA under the ITP without TxDOT’s consent (after receiving Conditional Award); or

(e) Principal’s failure to achieve Financial Close by the deadline set forth in ITP Section 1.6.3 (unless such failure is directly attributable to an event set forth in Section 3.4.2 of the CDA) and, if applicable, pay the Concession Payment, in accordance with the requirements of the CDA and the ITP.

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

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

(a) The ITP is incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the ITP.

(b) If suit is brought on this Closing Bond by TxDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by TxDOT in bringing such suit, including, without limitation, reasonable attorneys’ fees and costs as determined by the court.

(c) Correspondence or claims relating to this Closing Bond should be sent to Surety at the following address:

**SIGNED and SEALED** this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014

Principal

By:

Co-Surety

By:

          Attorney in Fact

By:

Co-Surety

By:

          Attorney in Fact

By:

       Co-Surety

By:

          Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]CO-SURETIES

|  |  |  |
| --- | --- | --- |
| SURETY NAME | SURETY ADDRESS | INCORPORATED IN |

FORM K-4  
  
CLOSING LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

**ISSUER:**

**PLACE FOR PRESENTATION OF DRAFT: [Name and Address of Bank/Branch] APPLICANT:**

**BENEFICIARY:** Texas Department of Transportation

7600 Chevy Chase Drive,

Building 2, 4th Floor,

Austin, Texas 78752

**LETTER OF CREDIT NUMBER:**

**PLACE AND DATE OF ISSUE:**

**AMOUNT:** $30,000,000

**STATED EXPIRATION DATE:** November 26, 2015 ***[Note: This date is ten days after the Financial Close Deadline]***

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of TxDOT, for the amount of $30,000,000, available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall be in the amount of $30,000,000 and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and

2. Be accompanied by the Beneficiary’s signed and dated statement stating one of the following:

(a) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s withdrawal of all or any part of its Proposal prior to 210 days following the Financial Proposal Due Date, without TxDOT’s consent, except as specifically permitted under the ITP.”

or

(b) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_’s failure to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1.”

or

(c) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s withdrawal, repudiation or other indication that it will not meet any commitments made in its Proposal prior to the time allowed for TxDOT’s execution of the CDA (after receiving Conditional Award).”

or

(d) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s failure, after Conditional Award, to execute and deliver to TxDOT the CDA and all other documents required under ITP Section 6.1 by the deadline set forth in ITP Section 1.6.2, without excuse under ITP Section 4.8.2.”

or

(e) “This drawing is due to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s failure to achieve Financial Close by the deadline set forth in ITP Section 1.6.3 (unless such failure is directly attributable to an event set forth in CDA Section 3.4.2) and, if applicable, pay the Concession Payment, in accordance with the requirements of the CDA and the ITP.”

All drafts will be honored if presented to (Bank/Branch - Name & Address) on or before the Stated Expiration Date described above.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central time, on any weekday (i.e., Monday through Friday, excluding Texas state holidays and U.S. federal holidays) (a “Business Day”), and provided that such Demand for Payment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment on the next Business Day after demand is made. If a Demand for Payment is made by you hereunder after 10:00 a.m., central time, on a Business Day, and provided that such Demand for Payment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, local time of the location of the account designated below or such other account at a national bank in the United States of America that you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution:

Routing Number:

Account Name:

Account Number to Credit:

Reference:

Attention:

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

The Instructions to Proposers (the “ITP”) is incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the ITP. For the avoidance of doubt, any reference to the ITP within this Letter of Credit is for informational purposes and in no way obligates [name of issuing bank] in accordance with the ITP terms nor is the document to be examined for compliance purposes.

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

This Letter of Credit is issued under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, including the Uniform Commercial Code, Chapter 5, Texas Business and Commerce Code, without regard to principles of conflicts of law.

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

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to Texas courts and law.

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

Issuer:

By:

(Authorized signature of Issuer)

FORM L  
  
OPINION OF COUNSEL

**[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 6.1.2(b) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS]**

Texas Department of Transportation  
7600 Chevy Chase Drive  
Building 2, Suite 400  
Austin, Texas 78752

Re: Comprehensive Development Agreement (“CDA”) for TxDOT SH 288 Toll Lanes Project in Harris County dated as of \_\_\_\_\_\_\_\_\_\_, 201\_, by and between Texas Department of Transportation, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Developer”)

Gentlemen:

[Describe relationship to Developer and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery of the proposal and execution of the CDA.] This letter is provided to you pursuant to Section 6.1.3(b) of the Instructions to Proposers of that certain Request for Proposals issued by the Texas Department of Transportation (“TxDOT”) on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as amended.

In giving this opinion, we have examined \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. [if certificate used/obtained from Developer or Guarantor, such certificate should also run in favor of TxDOT and should be attached to opinion]

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of Developer and that Developer has corporate power to own its properties and assets, carry on its business, make the Proposal, enter into the CDA and to perform its obligations under the CDA;] [if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

2. [opinion regarding good standing and qualification to do business in State of Texas for Developer;] [if Developer is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

3. [opinion regarding organization/formation and existence of Guarantor and that Guarantor has corporate power to own its properties and assets, to carry on its business, to enter into the Guaranty and to perform its obligations under the Guaranty;] [if Guarantor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners] [if there is no Guaranty, this opinion may be omitted]

4. [opinion that Proposal and CDA have been duly authorized by all necessary corporate action on the part of Developer and the Proposal and CDA have been duly executed and delivered by Developer;] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the first and second “Developer”]

5. [opinion that Guaranty has been duly authorized by all necessary corporate action on the part of Guarantor and the Guaranty has been duly executed and delivered by Guarantor;] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second “Guarantor”] [if there is no Guaranty, this opinion may be omitted]

6. [opinion that the CDA constitutes a legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms;] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second “Developer”]

7. [opinion that the Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms;] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the second “Guarantor”] [if there is no Guaranty, this opinion may be omitted]

8. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Proposal and the CDA; and that neither the Proposal nor the CDA conflict with any agreements to which Developer is a party [if Developer is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Developer is bound;] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners are bound]

9. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Guaranty; and that the Guaranty does not conflict with any agreements to which Guarantor is a party [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Guarantor is bound;] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are bound] [if there is no Guaranty, this opinion may be omitted]

10. [opinion that execution, delivery and performance of all obligations by Developer under the Proposal and the CDA do not conflict with, and are authorized by, the articles of incorporation and bylaws of Developer;] [if Developer is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Developer is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Developer is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]

11. [opinion that execution, delivery and performance of all obligations by Guarantor under the Guaranty does not conflict with, and is authorized by, the articles of incorporation and bylaws of Guarantor;] [if Guarantor is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Guarantor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Guarantor is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation] [if there is no Guaranty, this opinion may be omitted]

12. [opinion that execution and delivery by Developer of the Proposal and the CDA do not, and Developer’s performance of its obligations under the Proposal and the CDA will not, violate any current statute, rule or regulation applicable to Developer or to transactions of the type contemplated by the Proposal or the CDA;]

13. [opinion that execution and delivery by the Guarantor of the Guaranty do not, and the Guarantor’s performance of its obligations under the Guaranty will not, violate any current statute, rule or regulation applicable to the Guarantor or to transactions of the type contemplated by the Guaranty;] [if there is no Guaranty, this opinion may be omitted]

14. [opinion that the Lease, the Tolling Services Agreement, the Direct Agreement and D&C Direct Agreement, and the Independent Engineer Agreement have been duly authorized by all necessary corporate action on the part of Developer and the Agreements have been duly executed and delivered by Developer;] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the first and second “Developer”]

15. [opinion that the Lease, the Tolling Services Agreement, the Direct Agreement and D&C Direct Agreement, and the Independent Engineer Agreement constitute legal, valid and binding obligations of Developer enforceable against Developer in accordance with their terms;] [if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second “Developer”]

16. [opinion that execution and delivery by Developer of the Lease, the Tolling Services Agreement, the Direct Agreement and D&C Direct Agreement, and the Independent Engineer Agreement do not, and Developer’s performance of its obligations under such agreements will not, violate any current statute, rule or regulation applicable to Developer or to transactions of the type contemplated by the agreements.]

FORM M  
  
COMPLETION DEADLINES

The Proposal Commitment Date for Service Commencement set forth below shall be no later than the milestone date specified in Exhibit 8 of the CDA.

|  |  |
| --- | --- |
| **Description** | **Service Commencement Date** |
| Proposal Commitment Date for the Last Service Commencement of the Initial Configuration | NTP2 plus \_\_\_\_\_\_ calendar days |

**FORM N**

**DETAILED COSTING FORM**

Fill out Form N as follows:

* For each line item on pages 2-6, enter the total cost of construction.
* Enter all non-reimbursable costs other than operations and maintenance costs on page 4.
* The amount entered into the total cost field shall be sub-divided in the adjacent fields to represent how much is planned to be spent on the specific line item for each quarter.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **Total Cost** |  | | | |
| **I. Design Build Costs** | **Post NTP2** | | | |
|  | **Year 1** | **Year 2** | **Year 3** |
| Roads | **$** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Drainage | **$** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Structures | **$** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Building & Enclosed Facilities | **$** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Traffic Management & Sequencing | **$** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Mobilization – Refer to the definition of Payment Activity in Exhibit 1 to the CDA to apply mobilization cost in the appropriate quarter and for mobilization cost limitations. | **$** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| **SH 288 Construction Costs** | **$ (Box A)** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Of the total Construction Costs in Box A, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 northbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 northbound | **$** |  | | | |
| Of the total Construction Costs in Box A, indicate the amount for the (i) direct connector that connects BW 8 southbound to SH 288 westbound and (ii) the direct connector that connects BW 8 southbound to SH 288 eastbound | **$** |
| Of the total Construction Costs in Box A, indicate the amount for the (i) direct connector that connects BW 8 northbound to SH 288 westbound and (ii) the direct connector that connects BW 8 northbound to SH 288 eastbound | **$** |
| Of the total Construction Costs in Box A, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 southbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 southbound | **$** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **ITEM** | **Total Cost** | **Post NTP2** | | | |
| **Right-of-Way Costs** |  | **Year 1** | **Year 2** | **Year 3** |
| **Right-of-Way (Additional Properties)** | **$ (Box B)** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Of the total Right-of-Way costs in Box B, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 northbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 northbound | **$** |  | | | |
| Of the total Right-of-Way costs in Box B, indicate the amount for the (i) direct connector that connects BW 8 southbound to SH 288 westbound and (ii) the direct connector that connects BW 8 southbound to SH 288 eastbound | **$** |
| Of the total Right-of-Way costs in Box B, indicate the amount for the (i) direct connector that connects BW 8 northbound to SH 288 westbound and (ii) the direct connector that connects BW 8 northbound to SH 288 eastbound | **$** |
| Of the total Right-of-Way costs in Box B, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 southbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 southbound | **$** |
| **Utility Relocation (Utility Adjustments)** | **$ (Box C)** | 1st Qtr | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Of the total Utility Relocation costs in Box C, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 northbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 northbound | **$** |  | | | |
| Of the total Utility Relocation costs in Box C, indicate the amount for the (i) direct connector that connects BW 8 southbound to SH 288 westbound and (ii) the direct connector that connects BW 8 southbound to SH 288 eastbound | **$** |
| Of the total Utility Relocation costs in Box C, indicate the amount for the (i) direct connector that connects BW 8 northbound to SH 288 westbound and (ii) the direct connector that connects BW 8 northbound to SH 288 eastbound | **$** |
| Of the total Utility Relocation costs in Box C, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 southbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 southbound | **$** |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **ITEM** | **Total Cost** |  | **Pre NTP2** | **Post NTP2** | | |
| **Other Associated Costs** |
| **Year 0** | **Year 1** | **Year 2** | **Year 3** |
| Quality Assurance/Quality Control | **$** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| Design | **$** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| Survey | **$** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| Insurance | **$** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| Other Non-reimbursable Costs | **$** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| Independent Engineer (Cannot exceed 50% of total Independent Engineer cost) | **$** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| **Sub-Total Other Associated Costs** | **$ (Box E)** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| Of the total other costs in Box E, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 northbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 northbound | **$** |  | | | | |
| Of the total other costs in Box E, indicate the amount for the (i) direct connector that connects BW 8 southbound to SH 288 westbound and (ii) the direct connector that connects BW 8 southbound to SH 288 eastbound | **$** |
| Of the total other costs in Box E, indicate the amount for the (i) direct connector that connects BW 8 northbound to SH 288 westbound and (ii) the direct connector that connects BW 8 northbound to SH 288 eastbound | **$** |
| Of the total other costs in Box E, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 southbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 southbound | **$** |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **ITEM** | **Total Cost** |  | | | | | |
| **II. Maintenance and Operations Costs** |
| **Maintenance**  **(Routine and Life Cycle)** |  | **Year (m)** | **Year (m+1)** | **Year (m+2)** | **Year (m+3)** | **Year (m+x)** |
| Roads | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Drainage | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Structures | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Building & Enclosed Facilities | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Traffic Management & Sequencing | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Fleet & Equipment | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| **Sub-Total Maintenance Costs** | **$ (Box G)** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **ITEM** | **Total Cost** |  | | | | | |
| **II. Maintenance and Operations Costs** |
| **Maintenance**  **(Routine and Life Cycle)** |  | **Year (m)** | **Year (m+1)** | **Year (m+2)** | **Year (m+3)** | **Year (m+x)** |
| Of the total maintenance costs in Box G, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 northbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 northbound | $ | 1st Qtr |  |  |  |  |  |
| 2nd Qtr |
| 3rd Qtr |
| 4th Qtr |
| Of the total maintenance costs in Box G, indicate the amount for the (i) direct connector that connects BW 8 southbound to SH 288 westbound and (ii) the direct connector that connects BW 8 southbound to SH 288 eastbound | $ | 1st Qtr |  |  |  |  |  |
| 2nd Qtr |
| 3rd Qtr |
| 4th Qtr |
| Of the total maintenance costs in Box G, indicate the amount for the (i) direct connector that connects BW 8 northbound to SH 288 westbound and (ii) the direct connector that connects BW 8 northbound to SH 288 eastbound | $ | 1st Qtr |  |  |  |  |  |
| 2nd Qtr |
| 3rd Qtr |
| 4th Qtr |
| Of the total maintenance costs in Box G, indicate the amount for the (i) direct connector that connects BW 8 westbound to SH 288 southbound and (ii) the direct connector that connects BW 8 eastbound to SH 288 southbound | $ | 1st Qtr |  |  |  |  |  |
| 2nd Qtr |
| 3rd Qtr |
| 4th Qtr |

Note: Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, m = the first year after NTP2 and x = 4, 5, 6,….final year of Term)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **ITEM** | **Total Cost** |  | | | | | |
| **Operations** |  | **Year (m)** | **Year (m+1)** | **Year (m+2)** | **Year (m+3)** | **Year (m+x)** |
| Toll Operations | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Customer Service | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Incident Management | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| Lane Availability Management | **$** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |
| **Sub-Total Operations Costs** | **$ (Box H)** | 1st Qtr | $ | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ | $ |

Note: Provide maintenance and operations costs for each year of the Term of the Agreement (i.e., in the columns above, m = the first year after NTP2 and x = 4, 5, 6,….final year of Term)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Expenditure Plan** | | | | | | |
|  | | | **Pre NTP2** | **Post NTP2** | | |
| **ITEM** | **Total Cost** |  | **Year 0** | **Year 1** | **Year 2** | **Year 3** |
| SH 288 Interim Configuration Construction Costs | **$ (Box A)** | 1st Qtr |  | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Right-of-Way (Additional Properties) | **$ (Box B)** | 1st Qtr |  | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Utility Relocation (Utility Adjustments) | **$ (Box C)** | 1st Qtr |  | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| **Total Project Construction Costs (Box A + Box B + Box C)** | **$ (Box D)** | 1st Qtr |  | $ | $ | $ |
| 2nd Qtr | $ | $ | $ |
| 3rd Qtr | $ | $ | $ |
| 4th Qtr | $ | $ | $ |
| Other Associated Costs | **$ (Box E)** | 1st Qtr |  | $ | $ | $ |
| 2nd Qtr |  | $ | $ | $ |
| 3rd Qtr |  | $ | $ | $ |
| 4th Qtr |  | $ | $ | $ |
| **Total Project Design-Build Costs (Box D +Box E)** | **$ (Box F)** | 1st Qtr | $ | $ | $ | $ |
| 2nd Qtr | $ | $ | $ | $ |
| 3rd Qtr | $ | $ | $ | $ |
| 4th Qtr | $ | $ | $ | $ |
| **Total Maintenance and Operations Costs (Box G +Box H)** | **$ (Box I)** |  | | | | |
| **Total Project Costs (Box F +Box I)** | **$ (Box J)** |

Note: Pre NTP2 costs shall not be included in the Total Project Construction Costs shown in Box H of Form N-2.

**FORM O**

**TERMINATION FOR CONVENIENCE AMOUNTS**

| **Date of Effectiveness of Termination**  **Occurs on or after: And before:** | | **Termination  Compensation Amount** |
| --- | --- | --- |
| Service Commencement Date[[1]](#footnote-1) | The 2nd anniversary of Service Commencement Date | $ |
| The 2nd anniversary of Service Commencement Date | The 4th anniversary of Service Commencement Date | $ |
| The 4th anniversary of Service Commencement Date | The 6th anniversary of Service Commencement Date | $ |
| The 6th anniversary of Service Commencement Date | The 8th anniversary of Service Commencement Date | $ |
| The 8th anniversary of Service Commencement Date | The 10th anniversary of Service Commencement Date | $ |
| The 10th anniversary of Service Commencement Date | The 12th anniversary of Service Commencement Date | $ |
| The 12th anniversary of Service Commencement Date | The 14th anniversary of Service Commencement Date | $ |
| The 14th anniversary of Service Commencement Date | The 16th anniversary of Service Commencement Date | $ |
| The 16th anniversary of Service Commencement Date | The 18th anniversary of Service Commencement Date | $ |
| The 18th anniversary of Service Commencement Date | The 20th anniversary of the Service Commencement Date | $ |
| The 20th anniversary of the Service Commencement Date | The 22nd anniversary of the Service Commencement Date | $ |
| The 22nd anniversary of the Service Commencement Date | The 24th anniversary of the Service Commencement Date | $ |
| The 24th anniversary of the Service Commencement Date | The 26th anniversary of the Service Commencement Date | $ |
| The 26th anniversary of the Service Commencement Date | The 28th anniversary of the Service Commencement Date | $ |
| The 28th anniversary of the Service Commencement Date | The 30th anniversary of the Service Commencement Date | $ |
| The 30th anniversary of the Service Commencement Date | The 32nd anniversary of the Service Commencement Date | $ |
| The 32nd anniversary of the Service Commencement Date | The 34th anniversary of the Service Commencement Date | $ |
| The 34th anniversary of the Service Commencement Date | The 36th anniversary of the Service Commencement Date | $ |
| The 36th anniversary of the Service Commencement Date | The 38th anniversary of the Service Commencement Date | $ |
| The 38th anniversary of the Service Commencement Date | The 40th anniversary of the Service Commencement Date | $ |
| The 40th anniversary of the Service Commencement Date | The 42nd anniversary of the Service Commencement Date | $ |
| The 42nd anniversary of the Service Commencement Date | The 44th anniversary of the Service Commencement Date | $ |
| The 44th anniversary of the Service Commencement Date | The 46th anniversary of the Service Commencement Date | $ |
| The 46th anniversary of the Service Commencement Date | The 48th anniversary of the Service Commencement Date | $ |
| The 48th anniversary of the Service Commencement Date | The end of the Term | $ |

Provide the net present value of the Termination for Convenience Amounts set forth above as of the Financial Proposal Due Date, to the nearest dollar, in the box below. The net present value must be calculated at a 5% discount rate and assuming that the termination is effective and payment is made as of the last day of each period (e.g., in the case of the first period, as of the day immediately prior to the second anniversary of the Service Commencement Date).

|  |  |
| --- | --- |
| **Net Present Value of Termination for Convenience Amounts** | $\_\_\_\_\_\_\_\_\_\_\_\_ |

FORM P  
  
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by Proposer, Major Participants and proposed subcontractors]

The undersigned certifies on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that:  
 *(Name of entity making certification)*

*[check one of the following boxes]*

It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

*[check one of the following boxes]*

It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:

Title:

Date:

If not Proposer, relationship to Proposer:

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

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

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

FORM Q  
  
FINANCIAL SUMMARY

**Proposer Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTE: THE INFORMATION IN THIS FORM Q IS SUBJECT TO PUBLIC DISCLOSURE IN ACCORDANCE WITH SECTION 2.6 OF THE INSTRUCTIONS TO PROPOSERS.**

A. Provide the following information in Table 1, below:

* Nominal amount of Concession Payment (Form J-2, Box 1);
* Sum of nominal amount of Public Funds Payments (Form J-1, Box 2) (using absolute value, rather than negative number);
* Nominal amount of total development costs, showing breakdown for initial design costs, construction costs, ROW and ROW acquisition costs and utilities adjustment costs;
* Net present value of total operation and maintenance costs, showing breakdown for toll operation costs, routine and capital maintenance costs, using a 5% discount rate;
* Amount of Equity (all Developer contributions for the Project at risk) and Quasi-Equity contributions for each one of the Equity Members; and
* Expected Nominal Equity IRR.

Table 1

|  |  |
| --- | --- |
| **Concession Payment to TxDOT** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Form J-2, Box 1) |
|  |
| **Sum of Public Funds Payments** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Form J-2, Box 2) |
| **Total development cost**  **• Design costs**  **• Construction costs**  **• ROW and ROW acquisition costs**  **• Utilities adjustments costs**  **• Other (Identify)** | Total Development Costs:  $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_ |
| **Total operation and maintenance costs**  **• Toll operation costs (NPV)**  **• Routine and capital maintenance costs (NPV)** | Total O&M Costs:  $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_  • $\_\_\_\_\_\_\_\_\_\_\_ |
| **Amount of Developer Equity and Quasi-Equity contributions for each Equity Member** | A. Total for all Equity Members  $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  • $ [Equity Member]  • $ [Equity Member]  • $ [Equity Member] |
| **Nominal Equity IRR** |  |

B. Provide the nominal amounts for the sources and uses of funds for the construction period for the Project, as shown in Table 2, below.

Table 2

|  |  |
| --- | --- |
| **Sources of Funds** |  |
| **• Equity** |  |
| **• Subordinated debt** |  |
| **• Bank debt** |  |
| **• TIFIA** |  |
| **• PABs** |  |
| **• Bond** |  |
| **• Other (identify specifics)** |  |
|  |  |
| **Total Sources of Funds** |  |
|  |  |
| **Uses of Funds** |  |
| **• Design costs** |  |
| **• Construction costs** |  |
| **• ROW and ROW acquisition costs** |  |
| **• Utilities adjustments costs** |  |
| **• Other costs (identify specifics)** |  |
|  |  |
| **Total Uses of Funds** |  |

**FORM R  
  
Revenue Payment Calculation**

**Proposer Name:**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Band** | **Band 1** | | **Band 2** | | **Band 3** | | **Band 4** | | **Band 5** |
| **Revenue Payment (%)** | **0.0%** | | **12.5%** | | **25.0%** | | **50.0%** | | **75.0%** |
| **Calculation Date** | **Floor** | **Ceiling** | **Floor** | **Ceiling** | **Floor** | **Ceiling** | **Floor** | **Ceiling** | **Floor** |
| 1st | $0 | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] |
| 2nd | $0 | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] |
| 3rd | $0 | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] | $[\_\_\_] |
| [Etc.] |  |  |  |  |  |  |  |  |  |

**\*** The first calculation date should be December 31 of the year in which the third anniversary of the first Service Commencement Date occurs. The subsequent calculation dates should be December 31 of each subsequent year through the end of the Term. The final calculation date should be the last day of the Term.

FORM S

**GUARANTY**

FOR VALUABLE CONSIDERATION, \_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ (“**Guarantor**”), agrees as follows:

1. The term “**Agreement**” refers to the Comprehensive Development Agreement (the “CDA”) for the TxDOT SH 288 Toll Lanes Project in Harris County dated \_\_\_\_\_\_\_\_\_\_\_, as amended, by and between the TEXAS DEPARTMENT OF TRANSPORTATION, a public agency of the State of Texas (“**TxDOT**”), and \_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_(“**Principal**”). The Agreement is hereby incorporated by reference herein. Exhibit A to the Agreement contains the definitions of various terms used in this Guaranty.

2. The term “**Obligations**” refers to all of the obligations of Principal  
arising out of, in connection with, under or related to the Contract Documents as they may be amended or supplemented, including without limitation, liability for damages, indemnities and warranties as specified in the Agreement. The term “**Equity Owner**” means an entity or a firm that has a direct equity interest in the Principal or an indirect equity interest in the Principal through one or more limited liability intermediaries.

3. Guarantor irrevocably and unconditionally, as primary obligor and  
not merely as surety, guarantees and warrants to TxDOT and its successors and assigns the full and prompt payment and performance by Principal when due of the Obligations, up to the amount of $\_\_\_\_\_\_. [*to be included if multiple guarantees are provided:* Guarantor and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall have joint and several liability for performance of the Obligations, provided that the total liability of Guarantor and such other entities shall not exceed the foregoing limitation on liability.]

4. An Obligation may be incurred by Principal to TxDOT without  
further authorization from or notice to Guarantor.

5. In such manner and upon such terms and at such times as it  
deems best and with or without notice to Guarantor, TxDOT may alter, compromise, accelerate, extend or change the time or manner for the performance of any Obligation, or release or add one or more guarantors or endorsers, accept additional or substituted security, or release or subordinate any security given to secure the performance of any Obligation. No exercise or non-exercise by TxDOT of any rights given to it hereby, no dealing by TxDOT with Principal, any of Principal’s members or any entity with liability for the Obligations, and no change, retirement or suspension of any right or remedy of TxDOT, shall in any way affect any obligation of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against TxDOT.

6. TxDOT may waive any default or may fail to assert any rights  
(including rights of offset), or grant any other indulgence or concession with respect to all or any part of each Obligation, and may take and deal as herein provided with any bond, letter of credit, guaranty, instrument, document, collateral security or other property given to TxDOT to secure all or any part of the Obligations or otherwise available to TxDOT, and may apply any moneys, property or security available to it in such manner and amounts and at such times to the payment or reduction or performance of any Obligation as TxDOT may elect. Notwithstanding the foregoing, Guarantor shall remain bound by this Guaranty.

7. Guarantor waives any right to require that any claim or demand be  
asserted, any remedy available to TxDOT be enforced, or any action be brought against Principal, any of the Equity Owners or any other party or to require that resort be had to any security or property available to TxDOT.

8. This Guaranty shall not be affected by any full or partial payment or performance of any Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of Principal or any of its members, the dissolution of Principal or otherwise. Guarantor agrees that TxDOT may, in the event of a default herein or in any Obligation, proceed against Guarantor or Principal or any other entity with liability for the Obligations or any combination of the foregoing, in such order as TxDOT may deem appropriate. Guarantor waives any defenses it may have by reason of an election of remedies by TxDOT. Guarantor waives any claims of waiver, release, surrender, alteration, compromise, diligence and filing of claims with any court, provided that the foregoing shall not be deemed to preclude Guarantor from relying on any waivers or modifications of Agreement requirements which were previously made by TxDOT during the course of performance of the Agreement. Notwithstanding anything to the contrary contained herein, no action of TxDOT by way of compromise or settlement, in the context of any insolvency, reorganization or bankruptcy of Principal or any of its members, the dissolution of Principal or otherwise, will have any effect on Guarantor’s liability hereunder.

9. This Guaranty shall remain in full force and effect irrespective of  
any interruptions in the business relations of Principal with TxDOT. The failure by TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of Principal or any other entity with liability for the Obligations shall not operate to release Guarantor from liability hereunder.

10. Guarantor waives:

(a) notice of acceptance hereof and of the incurring or  
contracting of any Obligation;

(b) presentment and demand for payment or performance of any Obligation;

(c) protest and notice of the dishonor or default to any party with respect to any Obligation;

(d) all other notices to which Guarantor might otherwise be entitled; and

(e) any demand for payment hereunder.

11. Until all Obligations have been indefeasibly paid in full and  
performed, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Principal that arises from the performance of the Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution or indemnification against Principal, or participation in any claim, right or remedy of TxDOT against Principal or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Principal and any Equity Owner to Guarantor, and the right of Guarantor to withdraw any capital invested by Guarantor in Developer (whether directly or through an intermediary Equity Owner), are unconditionally subordinated to all of the Obligations. Whenever and for so long as Principal shall be in default in the performance of an Obligation, Guarantor shall not claim, sue for, collect or accept any payment from Developer or any Equity Owner with respect to any such indebtedness without the prior written consent of TxDOT. Any payment by Principal or any Equity Owner to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

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

13. Guarantor represents and warrants as follows:

(a) Guarantor is a \_\_\_\_\_\_\_\_\_\_\_ duly organized, validly existing and in good standing under the laws of \_\_\_\_\_\_\_\_\_\_\_, and Guarantor is duly  
qualified to transact business in each jurisdiction where the nature of its activities or the ownership of property makes such qualification necessary;

(b) Guarantor has full power and authority to transact the business in which it is engaged and to execute and deliver this Guaranty and perform its obligations hereunder;

(c) This Guaranty has been duly authorized, executed and delivered by Guarantor, and is a valid and binding agreement of Guarantor enforceable in accordance with the terms hereof;

(d) Neither the execution and delivery of this Guaranty, nor the  
fulfillment of or compliance with the terms and provisions hereof, will violate any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any mortgage, lien or encumbrance of any nature whatsoever upon any of the properties or assets of Guarantor pursuant to the terms of, Guarantor’s formation documents, or any mortgage, indenture, agreement or instrument to which Guarantor is a party or by which it is bound;

(e) No consent or action of, or filing with, any governmental or public regulatory body or authority is required to authorize, or is otherwise required in connection with, the valid execution, delivery and performance of this Guaranty; and

(f) Guarantor will not take any action which will cause Principal to dissolve.

14. This Guaranty is binding upon and inures to the benefit of the  
successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT’s discretion.

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

|  |
| --- |
| If to TxDOT: Texas Department of Transportation  7600 Chevy Chase Drive, Building 2, 4th Floor  Austin, Texas 78752  Attn: [\_\_\_\_\_\_\_\_\_\_\_\_]  E-mail: [TxDOT-HOU-PPP-SH288@txdot.gov](mailto:TxDOT-HOU-PPP-SH288@txdot.gov) |
| With copies to: Texas Department of Transportation   Office of General Counsel   125 East 11th Street  Attention: General Counsel   Telephone: (512) 463-8630   Telecopy:  (512) 475-3070 |
| If to Guarantor:       Attention:   Telephone:   Facsimile: |

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents. All notices sent by facsimile shall also be sent by mail on the same day. All notices and other communications shall be deemed effective upon receipt, if delivered personally or by express or courier service, upon transmission as shown in the confirmation, if delivered by facsimile, and five days following deposit in the United States mail, postage prepaid if delivered by mail.

16. Any forbearance or failure to exercise, and any delay by TxDOT in  
exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

17. Should any one or more of the provisions of this Guaranty be  
determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected by such determination. The rights of TxDOT hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against Guarantor or any other entity with liability for the Obligations or by any number of successive actions until and unless all Obligations have been fully paid or performed and expiration or termination of the Agreement. Guarantor agrees to execute, have acknowledged and delivered to TXDOT such other and further instruments as may be required by TxDOT to effectuate the intent and purpose hereof. No right of action shall accrue on this Guaranty to or for the use of any person or entity other than TxDOT or its successors and assigns until TxDOT’s claims have been satisfied in full. All words used herein in the singular shall be deemed to have been used in the plural when the context or construction so require. This Guaranty shall be governed by and be construed in accordance with the laws of the State of Texas.

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

a

By:

Title:

a

By:

Title:

**FORM T**

**PABS AGREEMENT**

**\* \* \* \* \***

**AGREEMENT AMONG  
THE TEXAS DEPARTMENT OF TRANSPORTATION,  
THE TEXAS PRIVATE ACTIVITY BOND SURFACE TRANSPORTATION CORPORATION  
AND [●]**

This Agreement (this “**Agreement**”) is made by and among the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas (the “**State**”), [●], a [●], (“**Developer**”) and the Texas Private Activity Bond Surface Transportation Corporation, a Texas public, non-profit corporation operating pursuant to Chapter 431, Texas Transportation Code (the “**Corporation**”).

**RECITALS**

A. Subchapter E of Chapter 223, Texas Transportation Code (“**Subchapter E**”), authorizes TxDOT to enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand various types of state highway improvement projects, including tolled projects, and sets out the process by which TxDOT will evaluate and enter into such an agreement.

B. As authorized by Texas Transportation Code §223.2012, on [●], 2015, the Texas Transportation Commission (the “**Commission**”), pursuant to Minute Order [●], authorized the TxDOT Executive Director to enter into a comprehensive development agreement (the “**CDA**”) between TxDOT and Developer to develop, design, construct, finance, maintain and operate the State Highway 288 Toll Lanes Project in Harris County (the “**Project**”).

C. TxDOT and Developer entered into the CDA as of [●].

D. Pursuant to the CDA, Developer anticipates utilizing the proceeds of tax exempt private activity bonds (the “**bonds**”) to finance or refinance a portion of the Project.

E. The Corporation and Developer intend in a single issuance or from time to time to enter into transactions in which bonds will be issued by the Corporation to finance, in whole or in part, the costs of the Project, as further set forth in the CDA.

F. The Corporation is authorized by State law including Chapter 431, Texas Transportation Code, to issue the bonds and loan the proceeds of the bonds to Developer.

G. This Agreement is being executed to establish the roles, responsibilities and understanding of the parties related to the issuance of the bonds referenced above as part of the financing of the Project.

**ARTICLE I  
ISSUANCE OF BONDS**

**1.1 Security.** The bonds will be issued by the Corporation without any recourse to the Commission, TxDOT, the Corporation or the State and the bonds shall be payable by the Corporation solely from payments received from Developer under a loan or similar agreement pursuant to which the Corporation shall make the proceeds of the bonds available to Developer, and as provided in a trust indenture and other bond documents as further described below. TxDOT shall have no obligation to pay debt service on any bonds issued or incurred in connection with the Project. The bonds are payable solely from the funds and secured solely by property furnished and to be furnished and provided by or on behalf of Developer and are not in any manner payable wholly or partially from any funds or properties otherwise belonging to the State, TxDOT, the Corporation or the Commission; and that by its issuance thereof, the Corporation does not in any manner, directly or indirectly, guarantee, warrant or endorse the creditworthiness or credit standing of Developer or of any guarantor of such obligations or the investment quality or value of the same.

**1.2 Principal Amount, Timing.** The Corporation will issue its bonds in one or more series in such principal amounts and at such times as reasonably requested by Developer in accordance with the plan of finance for the Project and in compliance with all applicable State and federal laws. Once a reasonable financing schedule has been agreed upon by TxDOT, the Corporation and Developer, the Corporation will work diligently and in good faith to accomplish the issuance of the bonds in accordance with the agreed-upon schedule, provided, that, such financing schedule may be adjusted, as mutually agreed upon by the parties, from time to time.

**1.3 Pricing.** TxDOT and the Corporation shall be involved in all aspects of the pricing of the bonds, including pre-pricing and pricing discussion and selection of pricing dates.

**1.4 Terms of Bonds.** Except as otherwise provided by State or federal law, Developer, in consultation with the Corporation and the Corporation’s advisors, shall: (a) select the type and terms of the bonds issued, including, but not limited to, maturity structure, maximum maturity within applicable law (currently up to 40 years), security, repayment terms, interest rates, reserve funds, refunding mechanisms, bond holder put or tender rights, and the manner of payment to the investors; and (b) determine the method by which the instruments in question are to be sold. The bonds must be fixed rate and cannot include interest rate swaps.

**1.5 Loan Agreement.** The Corporation and Developer will enter into a loan agreement or a similar document pursuant to which the Corporation shall make the proceeds of any bond issuance available to Developer and pursuant to which Developer will agree unconditionally to pay to the trustee pursuant to a trust indenture the principal and interest and redemption premiums on any bonds issued, when and as these amounts become due and payable, and to pay all of the trustee’s reasonable costs relating to the bonds and, to the extent required by the bond documents, reasonable costs related to the Project. The proceeds from the sale of any bonds will be applied by Developer only toward the uses permitted under the CDA and applicable law, pursuant to terms set forth in the loan agreement or similar document between the Corporation and Developer and the trust indenture pursuant to which such bonds will be issued and secured.

**1.6 Trustee.** For each bond issuance, the Corporation, with the prior written approval of Developer (such approval not to be unreasonably withheld, conditioned or delayed), may select a trustee, paying agent or escrow agent as needed, as determined by the Corporation. To the extent permitted by law, customary, reasonable and documented fees for the services of any trustee, paying agent or escrow agent shall be paid from bond proceeds. If not paid from bond proceeds, such fees shall be the exclusive responsibility of Developer, and subject to any fee caps or other fee arrangements set forth in the applicable engagement letter.

**1.7 Bond Documents.** Bond documents, such as a trust indenture, loan or similar agreement, and the bond resolution, shall be prepared by the Corporation’s bond counsel. These documents, and all documents related thereto, (herein collectively called the “**Bond Documents**”) shall be subject to negotiation and comment by all parties to such documents. The responsibility of drafting Bond Documents not specifically identified in this paragraph shall be as agreed upon by Developer and the Corporation.

**1.8 Underwriter.** Developer may select the lead underwriter and other managing underwriters, if any. After consultation with the Corporation and taking into account the recommendations of the Corporation (but not subject to the consent of the Corporation) Developer may also select the other members of the financial team, including other underwriters, remarketing agents and other team members deemed necessary. Notwithstanding the foregoing, Developer may not select underwriters or other members of the financial team who are prohibited from or otherwise not qualified to conduct business in the State. Further, Developer and the lead underwriter may select a law firm or firms to act as underwriter’s counsel.

**1.9 Financial Advisor and Other Consultants.** The Corporation may engage a financial advisor or co-financial advisor, and other such consultants as it determines appropriate, in each case, with the prior written approval of Developer (such approval not to be unreasonably withheld, conditioned or delayed), for a bond issue and the customary, reasonable and documented fees charged by the financial advisor and other consultants may be paid from bond proceeds to the extent permitted by law. Such fees, if or to the extent not paid from bond proceeds, shall be the exclusive responsibility of Developer, and subject to any fee caps or other fee arrangements set forth in the applicable engagement letter.

**1.10 Bond Counsel and Disclosure Counsel.** The Corporation shall select as bond counsel or co-bond counsel a firm whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized, and which may include the firms currently (as of the date hereof) approved by the Commission to act as bond counsel for the Commission. The Corporation, with the prior written approval of Developer (such approval not to be unreasonably withheld, conditioned or delayed), may separately select and engage the services of disclosure counsel, who shall be reasonably acceptable to both the Corporation and Developer. The customary and reasonable fees of all such counsel may be paid directly from bond proceeds to the extent permitted by law. Such fees, if or to the extent not paid from bond proceeds, shall be the exclusive responsibility of Developer, and subject to any fee caps or other fee arrangements set forth in the applicable engagement letter.

**1.11 Official Statement.** The information in the official statement or other offering document, including any offering memoranda, private placement memoranda, or other similar disclosure documents, pertaining to the Corporation, TxDOT, the Commission and the CDA must be approved by the Corporation prior to release of any such document. Developer and underwriter are otherwise responsible for the contents of the official statement or other offering document, subject to review by the Corporation’s bond counsel or disclosure counsel. The Corporation and TxDOT will cooperate with Developer in the preparation of the official statement, including providing information within their control. Developer will assist in providing continuing disclosure information, if necessary in accordance with Rule 15c2-12 of the Securities and Exchange Commission, and in providing customary 10(b)(5) comfort to the Corporation, TxDOT, the underwriter and Commission for information provided by Developer for use in the official statement or other offering document, and the Corporation and TxDOT will provide customary 10(b)(5) comfort with respect to information provided by them. The Corporation and TxDOT will comply with any continuing disclosure requirement that may be applicable to them or, with respect to TxDOT, to the Commission. Developer, and the Corporation, with the prior written approval of Developer (such approval not to be unreasonably withheld, conditioned or delayed), may hire such experts and feasibility consultants as may be reasonable or necessary to provide analysis and reports for the official statement, and the Corporation and TxDOT will cooperate in providing such information to such experts as is within their control. The customary, reasonable and documented fees of all such experts and consultants may be paid directly from bond proceeds to the extent permitted by law. Such fees, if or to the extent not paid from bond proceeds, shall be the responsibility of Developer, subject to any fee caps or other fee arrangements set forth in the applicable engagement letter.

**1.12 Fees.** The customary, reasonable and documented fees of the other entities engaged by Developer, or the Corporation with the prior written approval of Developer (such approval not to be unreasonably withheld, conditioned or delayed), to assist in the issuance of bonds or otherwise necessary for the issuance of bonds, and not otherwise explicitly referenced herein, may be paid from bond proceeds to the extent permitted by law. Such fees, if or to the extent not paid from bond proceeds, shall be the exclusive responsibility of Developer, and subject to any fee caps or other fee arrangements set forth in the applicable engagement letter.

**1.13 Credit Ratings.** Developer shall select the rating agency or agencies for the bonds. Developer shall coordinate with the Corporation in all discussions with such agency or agencies. Fourteen days, if practicable, but in any event not less than five Business Days, prior to any meeting with a rating agency in relation to the bonds to be issued and solely to the extent then available, Developer shall include on its escrow site the then current draft, if any, of the rating agency presentation that will be presented to the applicable rating agency. During the course of the week immediately preceding any meeting with a rating agency in relation to the bonds to be issued, solely to the extent a draft has been created and solely to the extent that any changes have been made as compared to any prior draft of such presentation that was already included by Developer on its escrow site, Developer shall include on its escrow site, by no later than 5:30 p.m. central standard time on each applicable day during such week, the then current draft, solely to the extent a draft has been created and modified, of the rating agency presentation that will be discussed at the upcoming rating agency meeting. To the extent that any changes are made to such rating agency presentation subsequent to 5:30 p.m. central standard time on the day immediately preceding the day on which the applicable rating agency meeting shall be held, Developer shall notify TxDOT prior to the presentation to such rating agency. TxDOT shall have the right to comment on the rating agency presentation described in this Section 1.13.

**1.14 Credit Enhancement.** Developer shall determine whether to obtain third party credit enhancement of a bond issuance, and if such credit enhancement is to be obtained or included, Developer shall select and engage the provider of such enhancement. Developer shall also negotiate all arrangements with the enhancement provider, but shall keep the Corporation informed of such negotiations and respond to the Corporation’s reasonable requests regarding information provided to the enhancement provider.

**1.15 Bond Documents Control.** At the time any bonds are issued the provisions of the Bond Documents for such issuance shall control over the provisions of this Agreement in the case of any conflict.

**1.16 Term of Agreement.** The term of this Agreement shall extend from the date it has been executed by each of the three parties hereto until the issuance of all of the bonds to be issued by the Corporation hereunder and under the CDA (including the Project Plan of Finance (as defined in the CDA)) for the Project, unless otherwise earlier terminated by agreement of all three parties hereto.

**1.17 Indemnity.** Developer, to the reasonable satisfaction of the Corporation, shall, in the Bond Documents, provide customary indemnification to (a) the State, the Commission, TxDOT, the Corporation and any of their respective directors, officers, employees and agents in connection with the issuance of the bonds and (b) the Corporation and its directors, officers, employees and agents in connection with the Project.

**1.18 Bond Approvals.** The Corporation shall obtain all required approvals of the Texas Bond Review Board and the Texas Attorney General. Developer will cooperate as needed at the request of the Corporation in obtaining such approvals, including attending meetings of the Bond Review Board if requested by the Corporation and providing information that may be requested by the Bond Review Board.

**ARTICLE 2  
DEVELOPER, CORPORATION AND TXDOT**

**2.1 Corporation Cooperation.** The Corporation hereby agrees to work diligently and in good faith in order to complete any bond financing contemplated herein in accordance with the reasonable timetable established by Developer, including taking all reasonable measures in order to timely obtain necessary governmental approvals, to provide for the timely approval of bond documents, issuance of the official statement and pricing, and to ensure timely scheduling of required public hearings or meetings and the issuance of related meeting notices in accordance with all legal requirements, taking into account scheduling concerns of Developer.

**2.2 TxDOT Cooperation.** TxDOT hereby agrees to cooperate with Developer and the Corporation, to provide necessary administrative and technical support to the Corporation, and to work diligently and in good faith to assist in the completion of any bond financing contemplated herein in accordance with the reasonable timetable established by Developer.

**2.3 Developer Cooperation.** Developer hereby agrees to cooperate with the Corporation and TxDOT in all reasonable ways to facilitate the timely completion of actions required to be taken by the Corporation and TxDOT as part of completing any bond financing contemplated herein.

**Signature Page Immediately Follows**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their officers thereunto duly authorized as of the date first written above.

**Corporation**

**Texas Private Activity Bond Surface Transportation Corporation**

By:

Name: [●]

Title: [●]

**Developer**

**[●]**

By:

Name: [●]

Title: [●]

**TxDOT**

**Texas Department of Transportation**

By:

Name: [●]

Title: [●]

1. To the extent Developer’s Project Segment Plan contemplates multiple Project Segments, the Service Commencement Date refers to the first Service Commencement Date. [↑](#footnote-ref-1)