FORM K-1

PROPOSAL BOND

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

**STATED EXPIRATION DATE:** September 4, 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:** September 4, 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:** December 3, 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:** December 3, 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)