

**REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN
THE
DFW CONNECTOR PROJECT
THROUGH A
COMPREHENSIVE DEVELOPMENT AGREEMENT**

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

**A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION**

**RFP ISSUED MARCH 28, 2008
ADDENDUM #1 ISSUED APRIL 14, 2008
ADDENDUM #2 ISSUED APRIL 30, 2008
ADDENDUM #3 ISSUED JUNE 4, 2008
ADDENDUM #4 ISSUED JUNE 17, 2008
ADDENDUM #5 ISSUED JULY 3, 2008
ADDENDUM #6 ISSUED JULY 8, 2008**

**Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701**

The Texas Department of Transportation (“TxDOT”) hereby issues this Addendum to Volume I of the Request for Proposals (the “RFP”) dated March 28, 2008 that was issued by TxDOT to shortlisted Proposers for the DFW Connector Project (the “Project”).

Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

1. Section 5.1 of the Instructions to Proposers (ITP) is modified as found in Attachment 1 to this Addendum 6:
2. ITP Form N-1 has been modified to read as found in Attachment 2 to this Addendum 6:

**REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN
THE
DFW CONNECTOR PROJECT
THROUGH A
COMPREHENSIVE DEVELOPMENT AGREEMENT**

**VOLUME II
CDA DOCUMENTS**

**A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION**

**RFP ISSUED MARCH 28, 2008
ADDENDUM #1 ISSUED APRIL 14, 2008
ADDENDUM #2 ISSUED APRIL 30, 2008
ADDENDUM #3 ISSUED JUNE 4, 2008
ADDENDUM #4 ISSUED JUNE 17, 2008
ADDENDUM #5 ISSUED JULY 3, 2008
ADDENDUM #6 ISSUED JULY 8, 2008**

**Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701**

The Texas Department of Transportation ("TxDOT") hereby issues this Addendum to Volume II of the Request for Proposals (the "RFP") dated March 28, 2008 that was issued by TxDOT to shortlisted Proposers for the DFW Connector Project (the "Project").

Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

1. Section 19 of the Comprehensive Development Agreement ("CDA") is hereby revised to read as found in Attachment 3 to this Addendum 6:
2. Exhibit 1 of the CDA has been revised to include terms pertinent to the revised dispute resolution procedures, and now reads as found in Attachment 4 to this Addendum 6:
3. A new CDA Exhibit 20 has been added. It is a Disputes Board Agreement, which must accompany the new dispute resolution procedures, and it reads as found in Attachment 5 to this Addendum 6:

**REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN
THE
DFW CONNECTOR PROJECT
THROUGH A
COMPREHENSIVE DEVELOPMENT AGREEMENT**

**VOLUME III
CMA DOCUMENTS**

**A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION**

**RFP ISSUED MARCH 28, 2008
ADDENDUM #1 ISSUED APRIL 14, 2008
ADDENDUM #2 ISSUED APRIL 30, 2008
ADDENDUM #3 ISSUED JUNE 4, 2008
ADDENDUM #4 ISSUED JUNE 17, 2008
ADDENDUM #5 ISSUED JULY 3, 2008
ADDENDUM #6 ISSUED JULY 8, 2008**

**Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701**

The Texas Department of Transportation (“TxDOT”) hereby issues this Addendum to Volume III of the Request for Proposals (the “RFP”) dated March 28, 2008 that was issued by TxDOT to shortlisted Proposers for the DFW Connector Project (the “Project”).

Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

1. Section 17 of the Capital Maintenance Agreement (“CMA”) is hereby revised as found in Attachment 6 to this Addendum 6:
2. Exhibit 1 of the CMA has been revised to include terms pertinent to the revised dispute resolution procedures, and now reads as found in Attachment 7 to this Addendum 6:
3. A new CMA Exhibit 15 has been added. It is a Disputes Board Agreement, which must accompany the new dispute resolution procedures, and it reads as found in Attachment 8 to this Addendum 6:
4. Exhibit 11 of the CMA (Form of Draw Request and Certificate) has been revised, and it reads as found in Attachment 9 to this Addendum 6:
5. Attachment 6 to the Maintenance Specification has been developed, and it reads as found in Attachment 10 to this Addendum 6:

Attachment 1

5.1 Organization of the TxDOT Evaluation Committee and Subcommittees

Evaluation of Proposals will be conducted by TxDOT's Evaluation and Selection Recommendation Committee ("ESRC") with assistance from ~~four~~ three separate subcommittees – a ~~Technical Proposal pass/fail and responsiveness subcommittee~~, a ~~Financial Proposal pass/fail and responsiveness subcommittee~~, a Development Plan Evaluation Subcommittee ("DPES"), and a Financial Proposal Evaluation Subcommittee ("FPES").

The ESRC and the various subcommittees will be comprised of representatives from TxDOT and will be chaired by individuals designated by the Texas Turnpike Authority Division Director. In addition to TxDOT voting members, the ESRC and subcommittees may also be assisted by advisors, including TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the ESRC subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, other observers, including representatives appointed by the FHWA and other observers requested by TxDOT, with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to TxDOT conflict of interest control requirements.

Attachment 2

DEVELOPMENT PRICE —Form N-1

DFW Connector CDA	Amount	NPV as calculated on Form N-2 at 15 July 2008 discounted at 5% per annum
Development Price		

Proposer is requesting the above total amount from TxDOT for the design and construction phase of the Project under the CDA.

An itemized breakdown of the Amount is shown on Form N-1.1.

Timing of payment is as shown on Form N-2.

SECTION 19.0 PARTNERING AND DISPUTE RESOLUTION

[to be revised in Addendum #6]

19.1 General Dispute Resolution Provisions

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Work.

19.2 Partnering

19.2.1 Schedule; Participation

As soon as possible after execution of this Agreement, TxDOT and Developer shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and Developer. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

19.2.2 Confidentiality

Subject to the requirements of the Public Information Act, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute resolution proceeding, unless such statements or materials are admissible or discoverable under applicable Law.

19.3 Dispute Resolution Procedures

19.3.1 Disputes Governed by These Procedures

(a) The Parties agree, in accordance with 43 TEX. ADMIN. CODE, Section 9.6, to be bound by and subject to the procedures established in this Section 19.3 as an agreement regarding dispute resolution procedures that shall survive expiration or earlier termination of the Term and thereafter for so long as either Party has any obligation originating under the CDA documents.

(b) The provisions of this Section 19.3 are intended to accord with Section 201.112 of the Code and the DRP Rules promulgated thereunder.

(c) As used in this Section 19.3, the phrase "the procedures established in this Section 19.3" includes the procedures established in this Section

19.3, the Disputes Board Agreement, the DRP Rules, the Code, and the Texas Government Code.

(d) All Disputes arising under the CDA documents shall be resolved pursuant to the Informal Resolution Procedures and, if not resolved thereby, the Dispute Resolution Procedures, except the following:

(i) Any equitable relief sought in Travis County, Texas district court that TxDOT is permitted to bring against Developer under Section 19.3.1.1; and

(ii) Ineligible Matters.

(e) Any disagreement between the Parties as to whether the Informal Resolution Procedures and/or the Dispute Resolution Procedures apply to a particular Dispute shall be treated as a Dispute for resolution in accordance with this Section 19.3.

(f) With respect to any Dispute for resolution in accordance with the procedures established in this Section 19.3, the Parties agree that (i) such Dispute must be asserted in writing to the other Party prior to the running of the applicable statute of limitations and (ii) provided that this is done, the applicable statute of limitations shall be tolled until the 30th day after conclusion of the last such procedure applicable to such Dispute.

19.3.1.1 Jurisdiction of Travis County, Texas District Courts

TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Developer, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law

19.3.1.2 Matters Ineligible for Dispute Resolution Procedures

The Dispute Resolution Procedures shall not apply to the following (collectively, "Ineligible Matters"):

(a) Any matters that the CDA documents expressly state are final, binding or not subject to dispute resolution;

(b) Any claim or dispute that does not arise under the CDA documents ;

(c) Any claim that is not actionable against TxDOT by Developer on its own behalf or on behalf of its Subcontractors in accordance with Section 19.4;

(d) Any claim for indemnity under Section 18;

(e) Any claim for injunctive relief;

(f) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;

(g) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;

(h) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Section 19);

(i) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this Section 19.3 do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in this Section 19.3 applicable;

(j) Any claim for, or dispute based on, remedies expressly created by statute; and

(k) Any Dispute that is actionable only against a Surety.

19.3.2 Informal Resolution As Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by a district court, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the informal resolution procedures described in Section 19.3.3 other than Section 19.3.3.3 (collectively, the "Informal Resolution Procedures"). Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for the Informal Resolution Procedures applicable to any subsequently arising Disputes.

19.3.3 Informal Resolution Procedures

19.3.3.1 Notice of Dispute to Designated Agent

(a) A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a written notice on the responding Party's designated agent. Unless otherwise indicated by written notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing:

(i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute;

the Dispute;

(ii) The date of the act, inaction or omission giving rise to

(iii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

CDA documents;

(iv) A reference to any pertinent provision(s) from the

(v) If applicable and then known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

(vi) If applicable, an analysis of the Facility Schedule and Milestone Schedule Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Milestone Schedule Deadlines);

(vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

and

(viii) The claiming Party's desired resolution of the Dispute;

relevant.

(ix) Any other information the claiming Party considers

(b) The notice shall be signed by the designated representative of the Party asserting the Dispute, and shall constitute a certification by the Party asserting the Dispute that:

(i) The notice of Dispute is served in good faith; and

(ii) To the then current knowledge of such Party, except as to matters stated in the notice of Dispute as being unknown or subject to discovery, (1) all supporting information is reasonably believed by the Party asserting the Dispute to be accurate and complete and (2) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the Party asserting the Dispute reasonably believes it is entitled; and

(iii) The designated representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

(c) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation.

Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing as appropriate, including execution of Change Orders or other documentation as needed, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

(d) The Party asserting the Dispute shall not be prejudiced by its initial statement of the Dispute and shall have the ability at any time during the Informal Resolution Procedures and Dispute Resolution Procedures to modify its statement of the Dispute and/or the amount of money or other right, remedy or relief sought.

19.3.3.2 Fast-Track Disputes

With respect to any Dispute that the Parties mutually designate as a Fast-Track Dispute, the Informal Resolution Procedures shall be abbreviated in that the procedure contemplated in Section 19.3.3.3 shall not be required.

19.3.3.3 CEO / Executive Director Meetings

Commencing within 10 Business Days after the notice of Dispute is served and concluding 10 Business Days thereafter, the Chief Executive Officer of Developer and the Executive Director or the assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Developer and TxDOT shall memorialize the resolution in writing, including execution of Change Orders or other documentation as appropriate, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

19.3.3.4 Failure to Resolve Dispute With Informal Resolution Procedures

If a Dispute is not timely resolved under the Informal Resolution Procedures, then within 15 days (seven days for Fast-Track Disputes) after the conclusion of the time periods for Informal Resolution Procedures, if such Dispute was not resolved to the Parties' satisfaction:

(i) The Parties may mutually agree to initiate mediation or other alternative dispute resolution process in accordance with Section 19.3.7; or

(ii) Either Party may refer the Dispute to the Disputes Board for resolution pursuant to Section 19.3.4.2.

19.3.4 Disputes Board; Finality of Disputes Board Decision

19.3.4.1 Disputes Board Agreement

(a) The Parties executed the Disputes Board Agreement on even date herewith. The Disputes Board Agreement governs all aspects of the Disputes Board, as well as all rights and responsibilities of the Parties with respect to the Disputes Board, that are not otherwise addressed in this Section 19.3, the DRP Rules and the Code.

(b) If the composition of either Party's Disputes Board Member Candidates' List has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement.

(c) The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue written findings of fact, written conclusions of law, and a written decision to TxDOT and Developer.

(d) The Disputes Board shall have the authority to resolve any Dispute other than Ineligible Matters and any actions for equitable relief in district court that TxDOT is permitted to bring against Developer under Section 19.3.1.1.

(e) The Disputes Board shall not have the authority to order that one Party compensate the other Party for attorneys' fees and expenses.

(f) If a Disputes Board Decision awards an amount payable by one Party to the other, such amount became or shall become due and payable on the date required for payment in accordance with the applicable DRP Governed Agreement. If the date of payment is not specified in a DRP Governed Agreement, the payment shall be due ten days after the date the Final Order Implementing Decision for such decision becomes final under Section 19.3.6 (or, if the tenth day is not a Business Day, the next Business Day).

(g) Except for those matters subject to Section 19.8, interest at LIBOR on an amount payable by one Party to the other shall accrue beginning on the date such amount was due and continuing until the date such amount is paid.

(h) If the notice of Dispute fails to meet the certification requirements under Section 19.3.3.1(b), on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete written certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

19.3.4.2 Submission of Dispute to Disputes Board

(a) Within 15 days (seven days for Fast-Track Disputes) after the end of the last time period under the Informal Resolution Proceedings, either Party may refer a Dispute to the Disputes Board for resolution by serving written notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 19.3.3.1(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a written response upon the claiming Party's designated agent. The response shall include the same information as the notice of Dispute issued under Section 19.3.3.1(a), to the extent applicable; shall be signed by the designated representative of the responding Party; and shall constitute a certification by the responding Party that:

(i) The response to the claiming Party's notice of Dispute is served in good faith;

(ii) All supporting information is reasonably believed by the responding Party to be accurate and, except as otherwise reasonably explained in the response, complete; and

(iii) The responding Party disputes the amount of money or other right, remedy or relief to which the claiming Party believes it is entitled.

(b) Neither Party may attempt to seek resolution of a Dispute by the Disputes Board or litigate the merits of any Dispute in court if such Dispute is not timely referred to the Disputes Board within the 15 day time period under Section 19.3.4.2(a) above, except for Ineligible Matters and Disputes for which TxDOT is entitled to seek relief in court.

(c) The responding Party shall also assert in its response any challenge it may then have to the Dispute Board's authority to resolve the Dispute if the responding Party then believes in good faith that the Dispute is an Ineligible Matter.

19.3.4.3 Finality of Disputes Board Decision

Upon completion of the remainder of the procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

19.3.5 SOAH Administrative Hearings and Final Orders

19.3.5.1 Appeal of Disputes Board Decision

(a) If, within 20 days after the Disputes Board's issuance of the Disputes Board Decision to TxDOT and Developer (the "Appeal Period"), either Party is dissatisfied with the Disputes Board Decision due to a good faith belief that Disputes Board Error occurred, (i) Developer may request the Executive Director to seek and/or (ii) TxDOT may seek a formal administrative hearing before SOAH pursuant to Texas

Government Code, Chapter 2001, and Section 201.112 of the Code, solely on the grounds that Disputes Board Error occurred. Upon receipt of Developer's request for a formal administrative hearing before SOAH, the Executive Director shall, as a purely ministerial act, refer the matter to SOAH within ten Business Days after receipt of Developer's request.

(b) If Developer does not request, and TxDOT does not seek for itself, a formal administrative hearing before SOAH under Section 19.3.5.1(a) within the Appeal Period, then within ten Business Days after the expiration of the Appeal Period, the Executive Director shall issue the Final Order Implementing Decision as a purely ministerial act. If the Executive Director fails to issue the Final Order Implementing Decision within this ten Business Day time period, the Disputes Board Decision shall become effective as the Final Order Implementing Decision for all purposes on the next Business Day.

(c) Neither Party may attempt to:

(i) Seek an administrative hearing before SOAH on any Dispute after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH pursuant to subsection (a) or subsection (b);

(ii) Seek rehearing in any forum of a Dispute that is the subject of a Disputes Board Decision after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH pursuant to subsection (a) or subsection (b); or

(iii) Resubmit to the Disputes Board or litigate in court any Dispute that was the subject of and resolved by a prior final Disputes Board Decision.

19.3.5.2 Appeal of Disputes Board Error to SOAH

"Disputes Board Error" means one or more of the following:

(a) The Disputes Board failed, in any material respect, to properly follow or apply the procedures for handling, hearing and deciding on the Dispute established under this Section 19.3 and such failure prejudiced the rights of a Party; or

(b) The Disputes Board Decision was procured by, or there was evident partiality among the Disputes Board Members due to, a Conflict of Interest, Misconduct, corruption or fraud.

19.3.5.3 SOAH Proceeding and ALJ Proposal For Decision

(a) Upon referral to SOAH of the question of whether Disputes Board Error occurred, the ALJ shall conduct a hearing solely on the question of whether Disputes Board Error occurred. The Disputes Board's written findings of fact, conclusions of law and Disputes Board Decision; any written dissenting findings,

recommendations or opinions of a minority Disputes Board Member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue to the Executive Director and Developer the ALJ's written proposal for decision as to whether Disputes Board Error occurred.

(b) Each Party may file exceptions to the proposal for decision with the ALJ no later than seven days after issuance of the ALJ's proposal for decision and, in response to a Party's exceptions, the other Party may file a reply to the excepting Party's exceptions with the ALJ no later than 14 days after issuance of the proposal for decision. The ALJ shall review all exceptions and replies and notify TxDOT and Developer no later than 21 days after issuance of the proposal for decision whether the ALJ recommends any changes to the proposal for decision, amends the proposal for decision in response to exceptions and replies to exceptions, and/or corrects any clerical errors in the proposal for decision. The ALJ shall reissue its written proposal for decision to the Executive Director and TxDOT, together with written findings of fact and conclusions of law, if revised from those previously furnished to the Parties.

(c) Unless a Party in good faith challenges the Disputes Board's authority to resolve the Dispute because the Dispute is an Ineligible Matter (1) in the proceedings before the Disputes Board, (2) as a Disputes Board Error during the Appeal Period, (3) in the SOAH proceeding or (4) in exceptions to the ALJ's proposal for decision timely filed under Section 19.3.5.3(b) above, any objection to the Disputes Board's authority to resolve the applicable Dispute shall be deemed waived by such Party.

19.3.5.4 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision:

(i) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that Disputes Board Error occurred, the Executive Director shall issue a Final Order Vacating Decision. A "Final Order Vacating Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code); ruling that the Disputes Board Decision is invalid, void and of no force and effect; and remanding the Dispute to the Disputes Board for reconsideration. If the nature of the Disputes Board Error was a Conflict of Interest, Misconduct fraud or corruption of a Disputes Board Member, the remanded Dispute will be reconsidered by a reconstituted Disputes Board after removal of such Disputes Board Member; or

(ii) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that no Disputes Board Error occurred, the Executive

Director shall issue a Final Order Implementing Decision. A "Final Order Implementing Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code), and approving and fully implementing the Disputes Board Decision.

(b) The Parties agree and acknowledge that the Executive Director's issuance of either type of Final Order is a purely ministerial function of the Executive Director. If the Executive Director fails to issue one or the other type of Final Order within the foregoing 28 Day time period, then on the next Business Day:

(i) If the ALJ determined that Disputes Board Error occurred, a Final Order Vacating Decision shall be deemed to have been issued for all purposes by the Executive Director which (1) adopted the ALJ's proposal for decision; (2) ruled that the Disputes Board Decision is invalid, void and of no force and effect; and (3) remanded the Dispute to the Disputes Board for reconsideration (or, if the nature of the Disputes Board Error was a Conflict of Interest or Misconduct of a Disputes Board Member, a reconstituted Disputes Board after removal of such Disputes Board Member) without Disputes Board Error; or

(ii) If the ALJ determined that no Disputes Board Error occurred, a Final Order Implementing Decision shall be deemed to have been issued for all purposes by the Executive Director which adopted the ALJ's proposal for decision and fully implemented the Disputes Board Decision.

19.3.6 Judicial Appeal of Final Orders Under Substantial Evidence Rule

Each issued or deemed issued Final Order Implementing Decision and Final Order Vacating Decisions shall be considered a final order for purposes of Developer's ability to seek judicial appeal thereof under Section 201.112(d) of the Code under the substantial evidence rule. TxDOT and Developer hereby agree that (a) pursuant to Section 2001.144(a)(4) of the Texas Government Code, each Final Order Implementing Decision and Final Order Vacating Decision shall be final (and therefore eligible for appeal under Section 201.112(d) of the Code) on the date such final order is issued or deemed issued by the Executed Director and (b) pursuant to Section 2001.145 of the Texas Government Code, TxDOT and Developer hereby agree that the filing of a motion for rehearing shall not be a prerequisite for appeal of such final orders under Section 201.112(d) of the Code.

19.3.7 Mediation or Other Alternative Dispute Resolution

Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Developer and TxDOT shall share equally the expenses of the mediation or other

alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30 day period, then either Party can, on or after the 31st day, cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 19.3 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

19.3.8 Confidential Information

19.3.8.1 All discussions, negotiations, and Informal Resolution Procedures between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, or Informal Resolution Procedures, shall be considered confidential and protected from disclosure pursuant to the Texas Public Information Act and Chapter 154 of the Texas Civil Practices and Remedies Code, and not subject to disclosure by either Party.

19.3.8.2 With respect to all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board, an administrative hearing before an ALJ or a judicial proceeding in court:

(a) All information that has been deposited into Escrow pursuant to Section 4.3.2 of the ITP shall be treated as confidential by the Parties and the Disputes Board, the ALJ and the court, as applicable, and, further, shall be subject to a protective order issued by the Disputes Board, the ALJ or the court, as applicable, to protect such information from disclosure to third Persons.

(b) Either or both Parties may also request a protective order in any Disputes Board proceeding, SOAH administrative hearing or judicial proceeding to prohibit disclosure to third Persons of any other information that such Party or Parties believe(s) is confidential. Whether such a protective order will be issued by the Disputes Board, the ALJ or the court, as applicable, shall be determined under the standards set forth in the Texas Rules of Evidence, the Texas Rules of Civil Procedure, Section 223.204 of the Code and the Public Information Act.

19.3 Disputes Governed by this Section

~~19.4 If partnering fails to resolve an issue and Developer elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the dispute resolution procedures established thereunder, as the same may be amended from time to time. This Section 19 shall not apply to: (a) Claims that are not actionable against TxDOT by Developer on its own behalf or on behalf of any of its Subcontractors in accordance with Section 19.4, (b) Claims arising solely in tort; (c) Claims for indemnity under Section 18; (d) Claims for injunctive relief; (e) Claims against insurance companies, including~~

~~any Subcontractor Dispute that is covered by insurance; (f) Claims arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Section 19); (g) any Dispute based on remedies expressly created by statute; or (h) any Dispute that is actionable only against a Surety.~~

19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

For purposes of this Section 19, a “Subcontractor Dispute” shall include any Dispute by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against Developer that is actionable by Developer against TxDOT and arises from Work, materials or other services provided or to be provided under the CDA Documents. If Developer determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

(a) Developer shall identify clearly in all submissions pursuant to this Section 19, that portion of the Dispute that involves a Subcontractor Dispute.

(b) Failure of Developer to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by Developer, as provided hereunder, shall constitute a release and discharge of TxDOT by Developer on account of, and with respect to, such Subcontractor Dispute.

(c) Developer shall require in all Subcontracts that all Subcontractors of any tier: (i) agree to submit Subcontractor Disputes to Developer in a proper form and in sufficient time to allow processing by Developer in accordance with this Section 19; (ii) agree to be bound by the terms of this Section 19 to the extent applicable to Subcontractor Disputes; (iii) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 19 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Developer; (iv) agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through Developer, shall be stayed until completion of all steps required under this clause (c); and (v) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against Developer.

~~19.6 Mediation or Other Alternative Dispute Resolution~~

~~Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Developer and TxDOT shall share equally the expenses of the mediation or other~~

~~alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 19 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.~~

19.619.5 Subsequent Proceedings

19.6.119.5.1 Exclusive Jurisdiction and Venue

The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, that is permitted to be brought by a Party in court arising out of the CDA Documents shall be the district courts of Travis County, Texas.

19.6.219.5.2 Admissibility of Disputes Resolution Proceedings

The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties' submittals and any TxDOT determinations shall be in the discretion of the appropriate administrative officer or the court in accordance with applicable Law.

19.719.6 Continuation of Disputed Work

At all times during the dispute resolution procedures set forth in this Agreement, Developer and all Subcontractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work even if Developer's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the CDA Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.7 Records Related to Claims and Disputes

Throughout the course of any Work that is the subject of any Dispute that is the subject of dispute resolution procedures of this Agreement, Developer shall keep separate and complete records of any extra costs, expenses, and/or other monetary effects relating to the disputed Work, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the CDA Documents).

19.8 Interest

This Section 19.88 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

In the event a Developer elects to pursue a formal Dispute with TxDOT under this Section 19, TxDOT shall notify Developer whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. Except as provided in this paragraph, a payment becomes overdue and begins to accrue interest on the 31st day after the later of: (1) the date TxDOT provides notice of Final Acceptance of the Project under Section 20.1; or (2) the date TxDOT receives a contract claim pursuant to Texas Transportation Code, Section 201.112 and the dispute resolution procedures established thereunder. If the resolution of a disputed claim results in the award of an amount which is less than the amount requested in the original claim, then the Developer shall submit a corrected invoice. The unpaid balance of the corrected invoice becomes overdue and begins to accrue interest on the 31st day after TxDOT receives the corrected invoice.

19.9 Attorney Fees

This Section 19.99 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

A party shall pay the attorneys fees of the other party for Disputes brought pursuant to this Section 19 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

Attachment 4

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM/AVI	Automatic Coin Machine / Automatic Vehicle Information
ACORD	Association for Cooperative Operations Research and Development
ACT	Antiquities Code of Texas
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADT	Average Daily Traffic
AISC	American Institute of Steel Construction, Inc
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATT/AVI	Attendant / Automatic Vehicle Identification
AUI	Advanced Utility Installation
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BI	Base Index
BMP	Best Management Practice
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CDA	Comprehensive Development Agreement
CD-R	Compact Disc Recordable
CD ROM	Compact Disc Read Only Memory
CEPP	Comprehensive Environmental Protection Program
CERCLA	Comprehensive Environmental Response Compensation and Liability Act

CFR	Code of Federal Regulations
CMP	Construction Monitoring Plan
CO	Carbon Monoxide
CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQP	Construction Quality Program
CRCP	Continuous Reinforced Concrete Pavement
CSJ	Control Section Job
CSTM	Materials and Pavements Section of TxDOT Construction Division
CWA	Clean Water Act
CZP	Contributing Zone Plan
DBE	Disadvantaged Business Enterprise
DSS	Decent Safe and Sanitary (dwelling)
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Data Management System
EMR	Environmental Monitoring Report
EMS	Environmental Management System
EP	Extraction Procedure (toxicity)
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Plan
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
ETCS	Electronic Toll Collection System
FAPG	Federal-Aid Policy Guide
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FM	Farm to Market Road
FOB	Field Operation Building
FONSI	Finding of No Significant Impact
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System
HEC	Hydraulic Engineering Circular

HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
ISDN	Integrated Services Digital Network
ISI	Initial Serviceability Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Traffic Sub-system
IWP	Investigative Work Plan
JSA	Job Safety Analysis
LRFD	Load and Resistance Factor Design
LSLS	Licensed State Land Surveyor
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MUAA	Master Utility Adjustment Agreement
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PCO	Potential Change Order
PCS	Pavement Condition Survey
PH	Percent Hydrogen
PI	Plasticity Index
PrI	Principle Investigator

PIAP	Project Independent Acceptance Program
PM	Project Manager
PMP	Project Management Plan
PSQRF	Professional Services Quality Review Firm
PSQRM	Professional Services Quality Review Manager
PSQCM	Professional Services Quality Control Manager
PSQP	Professional Services Quality Program
PUA	Possession and Use Agreement
PVC	Polyvinyl Chloride
QC / QRP	Quality Control / Quality Review Program
QMP	Quality Management Plan
RFI	Request For Information
QS	Qualifications Submittal
RCP	Reinforced Concrete Pipe
RFP	Request for Proposals
RFQ	Request for Qualifications
RHA	Rivers and Harbors Act
ROE	Right of Entry
ROW	Right of Way
ROWIS	Right of Way Information System
ROW AM	Right of Way Acquisition Manager
RPLS	Registered Professional Land Surveyor
RTP	Ramp Toll Plazas
SDPP	Special Deposit and Possession Procedure
SEC	Securities and Exchange Commission
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SI	System Integrator
SIR	Site Investigation Report
SSCB	Single Slope Concrete Barrier
SSTR	Single Slope Traffic Railing
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAS	Texas Accessibility Standards
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure

THC	Texas Historical Commission
TIM/OS	Turnpikes Intelligent Management / Operation System
TL	Testing Level
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TSI	Terminal Serviceability Index
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAP	TxDOT Utility Accommodation Policy
UAR	TxDOT Utility Accommodation Rules
UAdR	Utility Adjustment Report
UCS	Utility Coordination Specialist
UDC	Utility Design Coordinator
UM	Utility Manager
UPA	Utility and Personnel Access-way
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
VE	Value Engineering
VMS	Variable Message Sign
WBS	Work Breakdown Structure

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

Abbreviated Utility Assembly shall mean the collection of plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility proposed to remain at its original location within the Project ROW, as more particularly described in Section 6.3.4.5 of the Technical Provisions; a single Abbreviated Utility Assembly may address more than one such Utility.

Acceleration Costs shall mean those fully documented increased costs reasonably incurred by Developer (that is, costs over and above what Developer would

otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

Acquisition Packages shall mean the packages of documentation and information for the acquisition of parcels for the Project ROW described in Section 7.3.6 of the Technical Provisions.

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

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the Developer-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project. The term specifically excludes: (i) Replacement Utility Property Interests and (ii) any temporary easements or other real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for work space, contractor lay-down areas, material storage areas, borrow sites, or other convenience of Developer.

Adjacent Work shall mean any project, work, improvement or development to be planned, designed or constructed which could or does impact the Project and/or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

Adjust shall mean to perform a Utility Adjustment.

Adjustment Permits shall mean all Governmental Approvals and any private approvals, including the consent of a property owner, necessary for any Utility Adjustment. The term specifically excludes Utility Joint Use Agreements.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the CDA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 6.8.3.5 of the Agreement.

Advanced Utility Installation shall mean an installation of a Utility granted, and any additional cost for accommodations for the roadway may be paid for by TxDOT

allowing the said Utility to be installed to accommodate the construction of the highway features set forth by Developer. This procedure is typically utilized when the Utility has acquired an easement prior to the Department acquiring land for the Project. Developer under contract with TxDOT must participate in such installation by providing the most current plans for the installation and signing off that the Utility will not be in conflict with any of the roadway design features.

Administrative Settlement Committee shall mean a committee appointed by the District Engineer or his designee consisting of the ROW Administrator or his designee and two or more members who will analyze pertinent information and reach consensus on whether an administrative settlement should or should not be recommended.

Aesthetic Committee shall mean a committee comprised of TxDOT representatives that will review and approve the overall landscape and aesthetic layouts prepared by Developer in conformance with the Landscape Aesthetic Guidelines found in Attachment 15-1 to the Technical Provisions.

Affidavit of Property Interest shall mean the document describing an Existing Utility Property Interest claimed by a Utility Owner, as more particularly described in Section 6.2.4.1 of the Technical Provisions.

Affiliate shall mean:

- (a) any shareholder, member, partner or joint venture member of Developer,
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of the shareholders, members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer under clause (b) of this definition.

For purposes of this definition the term "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. "**Affiliated**" shall mean having the status of an Affiliate.

Agreement shall mean that certain Comprehensive Development Agreement, to which this Exhibit 1 is attached, executed by TxDOT and Developer, including any and all amendments thereto.

Alternate Procedure shall mean the alternate procedure for processing Utility Adjustments for FHWA approval pursuant to 23 CFR Section 645.119, which was approved by the FHWA for TxDOT by letter dated October 16, 1973.

Alternate Procedure List shall mean the list of Utilities to be Adjusted (and related information) which TxDOT will submit to the FHWA, as the same may be amended from time to time.

Alternative Technical Concept shall have the meaning set forth in Section 3.1 of the ITP.

Appeal Period has the meaning set forth in Section 19.3.5.1(a) of the Agreement.

Archaeologist shall mean a member of the Project Environmental Team responsible for assessment of cultural resources potentially impacted by the Work as more particularly described in Section 4.4 of the Technical Provisions.

Authorized Representative shall have the meaning set forth in Section 24.6.1 of the Agreement.

Basic Configuration shall mean the following elements defining the Project as set forth in the Schematic Design plans:

- (a) the Schematic ROW and control of access as shown in the Schematic Design plans;
- (b) the number of lanes for the Schematic Design;
- (c) the approximate location of the Tolling Zones;
- (d) the approximate location of ramps, and
- (e) the approximate location of interchanges and the type of interchanges.

Basic Costs shall mean the costs for the following, whether incurred by Developer directly or reimbursed by Developer to a Utility Owner: (i) Professional Services associated with, and construction, of a Utility Adjustment, plus (ii) acquisition of New Utility Property Interests or compensation to the Utility Owner for relinquishment of Existing Utility Property Interests within the Final ROW required for a Utility Adjustment.

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

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement(s); in all other cases, "Betterment" shall mean any upgrading of such facility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) any upgrading which is required by the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner's written "standards" meeting the requirements described in Section 6.1.2.2 of the Technical Provisions; or
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Owner in order to maintain its written telephony standards.

Book 1 shall mean the Agreement, all exhibits thereto, and the executed originals of Exhibits that are contracts (if any).

Book 2 means the project-specific technical provisions entitled "Design-Build Technical Provisions for Comprehensive Development Agreement Book 2."

Book 3 means TxDOT's standard technical provisions for CDA's entitled "Programmatic Design-Build Technical Provisions for Comprehensive Development Agreement – Book 3".

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

Capital Maintenance Agreement or **CMA** shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor for Maintenance Contractor to perform, at TxDOT's sole option, certain maintenance for the Project.

CDA Documents has the meaning set forth in Section 1.2.1 of the Agreement.

Certificate of Final Acceptance shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Final Acceptance.

Certificate of Substantial Completion shall mean the certificate issued by TxDOT indicating that the Project has achieved the conditions for Substantial Completion.

Change in Law shall mean: (a) the adoption of any Law after the Proposal Due Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Entity after the Proposal Due Date, in each case that is materially inconsistent with Laws in effect on the Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective as of the Proposal Due Date. The term "**Change in Law**" also excludes any change in or new Law relating to Developer's general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, medicare, unemployment and other payroll-related taxes.

Change of Control means any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A Change of Control of a shareholder, member, partner or joint venture member of Developer may constitute a Change of Control of Developer if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

- (a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Developer, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;
- (c) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Developer; or

- (d) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, TxDOT has received copies of such agreements.

Change Order shall mean a written order issued by TxDOT to Developer delineating changes in the Work within the general scope of the CDA Documents or in the terms and conditions of the CDA Documents in accordance with Section 13 of the Agreement and establishing, if appropriate, an adjustment to the Price or a Completion Deadline.

Claim shall mean: (a) a demand by Developer, which is or potentially could be disputed by TxDOT, for a time extension under the CDA Documents or payment of money or damages from TxDOT to Developer or (b) a demand by TxDOT, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to TxDOT.

CMA Documents shall mean the documents identified in Sections 1.2.1 and 1.2.2 of the Capital Maintenance Agreement.

Code shall mean the Texas Transportation Code.

Commercial Rules has the meaning set forth in the Disputes Board Agreement.

Commission shall mean the Texas Transportation Commission.

Competent Person shall mean an individual who, by way of training and/or experience, is knowledgeable of applicable health and safety standards, is capable of identifying workplace hazards, is designated, and has authority to take appropriate actions as referred to in OSHA standards and documents.

Comprehensive Environmental Protection Program shall mean the document obligating Developer to protect the environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the environment as further described in Section 4 of the Technical Provisions.

Completion Deadline shall mean the Substantial Completion Deadline and/or Final Acceptance Deadline, as the case may be.

Conflict of Interest means, with respect to any individual who is or is proposed to be a Disputes Board Member, any one or more of the following:

(a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does

not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

(b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the ~~DRP Governed Agreements~~CDA documents or any Contract (except that such individual's interest in receiving, and receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Facility shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

(c) Such individual shall not have had substantial prior involvement in any aspect of the FCA, a Contract or the Facility of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;

(d) Such individual shall not know of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

Conflicts Group means a Party, a Party's Affiliates and its and their agents, contractors, subcontractors or suppliers and any other Person that is a party to a Contract.

Construction Documents shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments in accordance with the CDA Documents.

Construction General Permit shall mean a permit under the TPDES program for the management of storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

Construction Monitoring Plan (CMP) shall mean the plan indicating times, locations, and other conditions under which monitoring of construction activities are to be performed to maintain and ensure compliance with Environmental Laws and the

CDA Documents as more particularly described in Section 4.3.7 of the Technical Provisions.

Construction Quality Acceptance Firm (CQAF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the CQP.

Construction Quality Acceptance Manager (CQAM) shall mean the person appointed by the CQAF who is responsible for management and quality acceptance functions, as more particularly described in Section 2.2.8.1.3 of the Technical Provisions.

Construction Quality Management Plan (CQMP) shall mean the plan that establishes quality control and quality acceptance procedures for the Work as more particularly described in Section 2.2.8 of the Technical Provisions.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes landscaping.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

Corridor Structure Type Study and Report shall mean a preliminary bridge type study report to evaluate potential superstructure and substructure configurations which may be suitable for the proposed bridges based on span lengths, deck widths, soil parameters, hydraulic and scour issues, environmental issues, wetland impacts, safety and maintenance of traffic, highway alignments, constructability, aesthetic requirements, future widening, construction schedule and costs. The Corridor Structure Type Study Report recommends configurations for the proposed bridges based on the above analysis and also provides the rationale for recommending the proposed alternatives as more particularly described in Section 13 of the Technical Provisions.

Cost and Schedule Proposal shall mean Developer's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 13.2.1.3 of the Agreement.

Cost to Cure shall mean an appraisal method applied to estimate a proper adjustment for damages to a property that can be physically and economically corrected, as described in further detail in the TxDOT Appraisal and Review Manual.

Critical Path shall mean each critical path on the Project Schedule, which ends on the Substantial Completion Deadline or the Final Acceptance Deadline, as applicable

(i.e. the term shall apply only following consumption of all available Float in the schedule for Substantial Completion or Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest chain(s) of logically connected activities through the Project Schedule with the least amount of positive slack or the greatest amount of negative slack.

Customer Groups shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in Section 3.2.4 of the Technical Provisions.

Day or **day** shall mean calendar days unless otherwise expressly specified.

DBE Performance Plan shall mean Developer's plan for meeting the DBE participation goals set forth in Section 7.1 of the Agreement.

DBE Special Provisions shall mean TxDOT's special provisions for the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Exhibit 6 to the Agreement.

Decent, Safe and Sanitary (DSS) Dwelling shall mean the condition of a dwelling such that it meets applicable housing and occupancy codes as defined in 49 CFR Part 24.

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

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments in accordance with the CDA Documents, the Governmental Approvals and applicable Law.

Design Exception shall mean a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual. The procedures for requesting a Design Exception are found in the TxDOT Project Development Policy Manual.

Design Firm shall mean the qualified Registered Professional Engineer's firm responsible for the design of the Project.

Design Quality Management Plan (DQMP) shall mean the plan prepared by Developer setting forth the internal quality control & quality assurance procedures to be

followed during performance of Professional Services, as more particularly described in Section 2.2.7 of the Technical Provisions.

Design Speed means the speed used to determine the various geometric design features of the roadway.

Design Waiver shall mean a deviation from the minimum requirements in a non-controlling category as identified in the TxDOT Roadway Design Manual.

Design Work means all Work of design, engineering or architecture for the Project, Project ROW acquisition or Utility Adjustments.

Developer shall mean _____, a _____, together with its successors and assigns.

Developer Default has the meaning set forth in Section 16.1.1 of the Agreement.

Developer-Designated ROW shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at Developer's cost and expense. The term specifically includes any easements required for drainage for the Project and any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of Developer.

Developer-Initiated VE shall have the meaning set forth in Section 22.1 of the Agreement.

Developer-Related Entities shall mean: (a) Developer, (b) Developer's shareholders, partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Developer Release(s) of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any

Developer-Related Entity in violation of the requirements of the CDA Documents or any applicable Law or Governmental Approval.

Developer's Utility Tracking Report shall mean an electronic report regarding Utilities likely to be impacted by the Project which Developer shall maintain on a current basis and shall submit quarterly to TxDOT, as more particularly described in Section 6.5.2 of the Technical Provisions.

Deviations shall mean: (a) any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions, or (b) a change in the Work or other requirements of the CDA Documents issued under Section 13.13 of the Agreement. "**Deviation**" includes a deviation from one or more of the twelve controlling criteria found in Chapter 1, Section 2, of the TxDOT Roadway Design Manual.

DFW-Airport Parcels shall mean the parcels identified in Section 7.5 of the Technical Provisions, which are labeled as "Fort Worth, City of (Airport)" in the ROW ownership map.

Differing Site Condition shall mean: (a) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents listed in Exhibit 19, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or (b) subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement. The term shall specifically exclude all such conditions of which Developer had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes: (i) changes in surface topography; (ii) variations in subsurface moisture content; (iii) Utility facilities; (iv) Hazardous Materials, including contaminated groundwater; (v) acquisition of real property for drainage purposes; and (vi) any conditions which constitute or are caused by a Force Majeure Event.

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

Disadvantaged Business Enterprise or **DBE** shall have the meaning set forth in Exhibit 6 to the Agreement.

Dispute means any Claim, dispute, disagreement or controversy between TxDOT and Developer concerning their respective rights and obligations under the CDA documents DRP Governed Agreements including concerning any alleged breach or failure to perform and remedies.

shall mean a "Contract Claim", as such term is used and defined in Texas Transportation Code Section 201.112, as the same may be amended from time to time. Disputes include Subcontractor Disputes.

Dispute Resolution Procedures means collectively, the procedures established under Sections 19.3.4 and 19.3.5 of the Agreement and in Section 5 of the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

Disputes Board has the meaning set forth in the Disputes Board Agreement.

Disputes Board Agreement means the agreement in the form attached to the Agreement as Exhibit 20.

Disputes Board Chair has the meaning set forth in the Disputes Board Agreement.

Disputes Board Decision has the meaning set forth in the Disputes Board Agreement.

Disputes Board Error has the meaning set forth in Section 19.3.5.2 of the Agreement.

Disputes Board Member means an individual serving as one of the three members of the Disputes Board.

Disputes Board Member Candidate Evaluation Period has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Candidates' List has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Joinder Agreement has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Qualifications has the meaning set forth in the Disputes Board Agreement.

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit 15 to the Agreement or Exhibit 11 to the Capital Maintenance Agreement.

DRP Rules means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act and effective under Rule §9.6 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding dispute resolution procedures applicable to the resolution of all claims and disputes of every kind or character arising under comprehensive development agreements such as and including the CDA documents **DRP Governed Agreements**.

Early Start of Construction shall mean the initiation of construction before the Final Design Plans have been approved by TxDOT, as more particularly described in Section 2.2.7.9 of the Technical Provisions.

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

Electronic Data Management System shall mean the secure data management system provided by Developer containing all of the data Developer is required to submit to TxDOT in connection with the Work and compatible with data systems, standards and procedures employed by TxDOT, as more particularly described in Section 2.1.2.2 of the Technical Provisions.

Electronic Toll Collection System shall mean the toll collection system to be provided by the Systems Integrator, in connection with which Developer provides support and coordination, as more particularly described in Section 21 of the Technical Provisions.

Element means an individual component, system or subsystem of the Project or of a Utility Adjustment included in the Construction Work, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Table Baseline, further subdivided by Auditable Section where appropriate.

Emergency means any unplanned event within the Project Right of Way that (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the Safety of Users or the public; or (c) is recognized by the Texas Department of Public Safety as an emergency.

Emergency Services shall mean law enforcement, ambulance service and other similar services from agencies with whom Developer establishes protocols for incident response, safety and security procedures, as set forth in the Emergency Management Plan.

Engineer in Responsible Charge shall mean the professional engineer accountable for direction, control and supervision to assure that the Work has been critically examined and evaluated for compliance with appropriate professional standards and the requirements of the CDA Documents and the CMA Documents, as applicable.

ENR Construction Cost Index shall mean the 12-month "Construction Cost Index" published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY 10121.

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project, including New Environmental Approvals, approvals and permits required under NEPA and those approvals identified in Section 4 of the Technical Provisions.

Environmental Assessment shall mean the environmental assessment for the Project dated _____, 2008.

Environmental Commitment (also **Environmental Permits, Issues and Commitments**) shall mean an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

Environmental Commitments Document shall mean the draft document describing anticipated environmental commitments released to Proposers on May 9, 2008, including any updates provided to Proposers prior to June 20, 2008.

Environmental Compliance and Mitigation Plan shall mean the Developer's plan, to be prepared under the CEPP described in the Project Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in Section 4.3.2 of the Technical Provisions.

Environmental Compliance Inspectors (ECIs) shall mean the person(s) retained or employed by Developer who provide on-site monitoring of the Project and the Work under direction of the Environmental Compliance Manager as more particularly described in Section 4.4.2 of the Technical Provisions.

Environmental Compliance Manager (ECM) shall mean the person retained or employed by Developer who has the authority and responsibility for monitoring, documenting, and reporting environmental compliance for the Work as more particularly described in Section 4.4.1 of the Technical Provisions.

Environmental Law shall mean any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;

- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

Environmental Management System shall mean the system and program that the Environmental Compliance Manager supervises. The system and program includes monitoring field activities for environmental compliance by environmental inspectors, producing weekly reports, providing an environmental training program including a training staff, and developing an environmental team as more particularly described in Section 4.3.1 of the Technical Provisions.

Environmental Protection Training Program (EPTP) shall mean that program to be initiated by Developer and overseen by TxDOT personnel to ensure the Work is conducted in accordance with the environmental commitments and requirements set forth in all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.3.3 of the Technical Provisions.

Environmental Team (ET) shall mean the personnel team appointed by Developer, and led by the ECM, to ensure compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 4.4 of the Technical Provisions.

Environmental Training Staff shall mean Project personnel with experience as set forth in the Technical Provisions and appointed by the ECM to develop and implement an Environmental Protection Training Program as more particularly described in Section 4.4 of the Technical Provisions.

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

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

Evaluating Party has the meaning set forth in the Disputes Board Agreement.

Event of Default shall have the meaning set forth in Section 16.1.3 of the Agreement.

Existing Utility Property Interest shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Expendable Materials shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

Federal Requirements shall mean the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 3 to the Agreement.

Final Acceptance shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.3.2 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Final Acceptance.

Final Acceptance Deadline shall mean the deadline set forth in Section 4.2.2 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

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

Final Design Documents shall mean the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project and any Utility Adjustments, and satisfying the requirements presented in Section 2.2.7.7 of the Technical Provisions.

Final Design Submittal shall mean the submittal by Developer for review and comment by TxDOT of Design Documents certified by the PSQRM demonstrating compliance with the CDA Documents and incorporating all Intermediate Design Submittal review comments, as more particularly described in Section 2.2.7.5 of the Technical Provisions.

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

Final Order means the order issued by the Executive Director pursuant to Section 19.3.5.1 or 19.3.5.4 of the Agreement.

Final Order Implementing Decision has the meaning set forth in Section 19.3.5.1(b) and 19.3.5.4(a)(ii) of the Agreement.

Final Order Vacating Decision has the meaning set forth in Section 19.3.5.4(a)(i) of the Agreement.

Final Payment shall mean payment by TxDOT of the final installment of the Price.

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

Float shall mean the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

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

- (a) Any earthquake, tornado, hurricane or other natural disaster that causes direct physical damage to the Project;
- (b) Any epidemic in the Dallas-Fort Worth area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;
- (e) The discovery at, near or on the Project ROW (excluding Developer-Designated ROW) of any species listed of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Proposal Due Date), provided that the presence of such species was not disclosed in, or ascertainable from, the RFP Documents, was not otherwise known to Developer prior to the Proposal Due Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Due Date;
- (f) Any Change in Law, which (1) requires a material modification of the Project design, (2) requires Developer to obtain a new major State or federal environmental approval not previously required for the Project, (3) results in an increase in Developer's costs directly attributable to the Change in Law of at least \$250,000, (4) results in imposition of additional mitigation requirements on the Project due to impacts on archaeological,

paleontological, biological or cultural resources, or (5) specifically targets the Project or Developer;

- (g) Any spill of Hazardous Material by a third party who is not acting in a capacity of a Developer-Related Entity which: (1) occurs after the Proposal Due Date, (2) is required to be reported to a Governmental Entity and (3) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;
- (h) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work;
- (i) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the TxDOT-Provided Approvals or other Governmental Approval; and
- (j) The addition of any new condition or requirement in the NEPA Approval or the final USACE Nationwide Permit based on the Schematic Design and the Schematic ROW, subject to the limitations and conditions described in Section 6.10.1 of the Agreement.

The term "**Force Majeure Event**" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) except as provided in clause (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence, including vandalism or theft;
- (iii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iv) the suspension, termination, interruption, denial, failure to obtain, non-renewal or change in any requirements of any Governmental Approval, except for any such matter falling within the scope of clause (e), (h), (i) or (j) above;
- (v) any increased costs or delays related to any Utility Adjustment Work or failure to obtain any approval, work or other action from a

Utility Owner, except to the extent directly due to any of the matters listed in clauses (a) through (j) above;

- (vi) the presence at, near or on the Site, as of the Effective Date, of any Hazardous Material, including substances disclosed in the Reference Information Documents as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any Change in Law which has the effect of modifying a Utility Owner's required specifications, standards of practice and/or construction methods for the Utility Adjustment Work to be furnished or performed by Developer (or reimbursed by Developer), which occurs after the Proposal Due Date but prior to the date on which the applicable Utility Agreement is signed by the Utility Owner; and
- (viii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (j) above.

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

Geotechnical Engineering Reports shall mean the reports documenting the assumptions, conditions and results of geotechnical investigations and analysis, as more particularly described in Section 8.4 of the Technical Provisions.

Good Industry Practice shall mean the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or maintenance contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking under circumstances and conditions similar to those within the same geographic area as the Project.

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

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

Guarantor shall mean each of the entities which provided a guaranty in the form of Exhibit 13 of some or all of the obligations of Developer under the CDA Documents.

Guaranteed Obligations shall have the meaning set forth in the Guaranty.

Guaranty shall mean each guaranty executed by a Guarantor guaranteeing some or all of the obligations of Developer under the CDA Documents.

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

- (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);
- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;

- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management shall mean procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

Hazardous Materials Management Plan shall mean the plan prepared by Developer for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 4.3.5 of the Technical Provisions.

Hazardous Materials Manager shall mean the person designated by the Environmental Compliance Manager to provide expertise in the safe handling of Hazardous Materials, as more particularly described in Section 4.4.7 of the Technical Provisions.

Identified Utility shall mean any Utility impacted by the Project to which any one or more of the following applies:

- (a) The Utility line is shown on the Utility Strip Map (irrespective of whether correct ownership is shown).
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on the Utility Strip Map (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).

- (c) The Utility is an overhead Utility existing as of the Proposal Date or which commenced installation prior to the Proposal Date.
- (d) The Utility is an extension of an Identified Utility (including a Service Line extending from an Identified Utility).
- (e) The Utility is located in the same trench as an Identified Utility (e.g. communication duct bank and joint communication cable facilities).

Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on the Utility Strip Map that is a component or extension of an Identified Utility is considered a part of the Identified Utility.

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

Incident shall mean a localized disruption to the free flow of traffic on or safety of users of the Project.

Incidental Utility Adjustment Work shall mean all of the following work that Developer is responsible for performing, or causing to be performed, at its own expense and that is necessary or determined by Developer to be required for the construction and/or accommodation of the Project:

- (a) Service Line Adjustments including appurtenances (excluding any Service Line Adjustment for which the owner of the affected real property has been compensated pursuant to Section 6 - Right of Way, and provided that Developer shall obtain all temporary rights of entry needed for such Adjustments in accordance with Section 6 - Right of Way);
- (b) Temporary Utility Adjustments;
- (c) Utility Appurtenance Adjustments;
- (d) Temporary Protections in Place; and
- (e) Resurfacing and re-striping of streets (including sidewalks) and reconstruction of curb, gutter, sidewalks and landscaping where necessary due to Utility Adjustment Work, whether performed by the Utility Owner or by Developer.

Indemnified Parties shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, the Program Manager and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Informal Resolution Procedures has the meaning set forth in Section 19.3.2 of the Agreement.

Instructions to Proposers (ITP) shall mean the Instructions to Proposers issued by TxDOT on February 22, 2008 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and software source code. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intelligent Transportation System (ITS) shall mean the system to monitor traffic flow, detect traffic and traffic operational conditions and communicate relevant traffic information to users of the Project as more particularly described in Section 17 of the Technical Provisions.

Investigative Work Plan (IWP) shall mean a plan prepared by Developer addressing the methods, techniques, and analytical testing requirements to adequately characterize the extent of impacts by Hazardous Materials to an area of concern.

Job Training and Small Business Mentoring Plan shall mean the plan set forth in Exhibit 8 to the Agreement.

Key Personnel shall mean the following positions:

(1) Project Director; (2) Deputy Project Director – Design; (3) Deputy Project Director – Construction; (4) Public Relations Manager; (5) Right of Way Manager; (6) Utility Manager; (7) Design Manager; (8) Construction Manager; (9) Professional Services Quality Control Manager; (10) Construction Quality Control Manager; (11) Environmental Compliance Manager; (12) Independent Professional Services Quality Review Manager; (13) Independent Construction Quality Acceptance Manager; (14) Maintenance Manager; and (15) Maintenance QC Manager.

Lane Closure shall mean full or partial closure of any traffic lane in any portion of the Project and for any duration, including main lanes, ramps, direct connectors, frontage roads and cross roads.

Lane Rental Charges shall mean the liquidated damages described in Exhibit 17 to the Agreement.

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the CDA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

Lien shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages shall have the meaning set forth in Section 17.1.1 of the Agreement.

Losses shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Maintaining Agency shall mean the agency responsible for the maintenance of traffic signals along crossing streets or roads.

Maintenance Contractor shall mean _____.

Maintenance NTP1 shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Maintenance Services shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Maintenance Term shall have the meaning set forth in Exhibit 1 of the Capital Maintenance Agreement.

Major Culvert shall mean a culvert that provides an opening of more than 35 square feet in a single or multiple installations. A major culvert may consist of a single round pipe, pipe arch, open or closed-bottom box, bottomless arch, or multiple installations of these structures placed adjacent or contiguous as a unit. Certain major culverts are classified as bridges when they provide an opening of more than 20 feet, measured parallel to the roadway; such culverts may be included in the bridge inventory.

Major River Crossing shall mean a crossing with a 100-year storm event flow in excess of 10,000 cubic feet per second (cfs).

Major Subcontracts shall mean a Subcontract in excess of \$3,000,000.

Major Subcontractor shall mean a Subcontractor who has entered into a Major Subcontract with Developer.

Management Plans shall mean all of the management plans listed in Section 2 of the Technical Provisions.

Master Utility Adjustment Agreement (MUAA) shall mean an agreement between Developer and a Utility Owner which sets forth terms and conditions for one or more Utility Adjustments, as the same may be amended or supplemented from time to time and as more particularly described in Section 6.1.4.1 of the Technical Provisions. A document is a "Master Utility Adjustment Agreement" if it meets the foregoing definition, without regard to the title of the document.

- (a) **Master Utility Adjustment Agreement (Developer-Managed)** shall mean a Master Utility Adjustment Agreement providing for design and construction by Developer of the Utility Adjustment(s) addressed therein.
- (b) **Master Utility Adjustment Agreement (Owner-Managed)** shall mean a Master Utility Adjustment Agreement providing for design and construction by the Utility Owner of the Utility Adjustment(s) addressed therein.

Maximum Payment Schedule shall mean the curve described in Section 4.3.3 of the Agreement which constitutes a cap on the aggregate amount of payments which may be made to Developer hereunder at any specified time.

Minor Culvert shall mean any culvert that is not classified as a major culvert.

Misconduct means, with respect to any individual who is a Disputes Board Member, any one or more of the following:

(a) Any ex parte communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other ex parte communication prohibited under R-10 of the Commercial Rules;

(b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Facility;

(c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or

(d) A material lack of the requisite experience under Section 4.1 of the Disputes Board Agreement that was not and could not reasonably have been discovered by the Nominating Party or the Evaluating Party at the time such individual was proposed and approved for inclusion on the Nominating Party's Disputes Board Member Candidates' List, including, by way of example and not limitation, a situation where such individual has materially misrepresented his or her experience to the Parties.

Municipal Separate Storm Sewer System shall mean the classification of a storm water sewer system of communities that exceed population thresholds established under the TPDES program as more particularly described in Section 4.3.2 of the Technical Provisions.

National Flood Insurance Program shall mean the insurance program managed by the Federal Emergency Management Agency which provides flood insurance to property owners located in participating communities.

Nationwide Permit Program shall have the meaning set forth in 33 CFR Part 330.

Natural Resource Biologist shall mean the team member designated by the Environmental Compliance Manager to provide expertise on monitoring impacts on wildlife and the natural environment due to construction activities related to the Work as more particularly described in Section 4.4.5 of the Technical Provisions.

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

NEPA Approval shall mean each decision document issued by FHWA for the Project or a portion of the Project, and all approved supplements and reevaluations pertaining to the Project as of the Effective Date.

New Environmental Approval shall mean: (a) any Environmental Approval required for the Project, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval, including any such approval, revision, modification, or amendment required for the drainage easements described in Section 6.2.2 of the Agreement.

New Utility shall mean a Utility installed within the Schematic ROW after the Proposal Due Date, not contained in the Utility Strip Map, and not otherwise known to Developer prior to the Proposal Due Date.

Nominating Party has the meaning set forth in the Disputes Board Agreement.

Nonconforming Work shall mean Work that does not conform to the requirements of the CDA Documents, the Governmental Approvals, applicable Law or the Design Documents.

Notice of Intent shall mean the notice of intent prepared and submitted by Developer to the TCEQ under the Construction General Permit for storm water discharges from construction sites as more particularly described in Section 4.3.2 of the Technical Provisions.

Notice of Partial Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating part of the Work of Developer for convenience under Section 15.1 of the Agreement.

Notice of Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating the Work of Developer for convenience under Section 15.1 of the Agreement.

NTP1 means a written notice issued by TxDOT to Developer authorizing Developer to proceed with the portion of the Work described in Section 4.1.3 of the Agreement.

NTP2 means a written notice issued by TxDOT to Developer pursuant to Section 4.1.4 of the Agreement authorizing Developer to proceed with the remaining Work and other activities pertaining to the Project.

Off-Peak Times shall mean all times not defined as Peak Times.

Open Book Basis shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Developer or TxDOT) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing,

discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

Outstanding Natural Resource Waters shall have the meaning set forth in Section 4 of the Technical Provisions.

Party shall mean Developer or TxDOT, as the context may require, and “**Parties**” shall mean Developer and TxDOT, collectively.

Payment Bond shall mean the NTP1 Payment Bond described in Section 8.1.2 and/or NTP2 Payment Bond described in Section 8.1.4, as applicable.

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

Peak Times shall have the meaning set forth in Exhibit 17. .

Performance Bond shall mean the NTP1 Performance Bond described in Section 8.1.1 and/or NTP2 Performance Bond described in Section 8.1.3, as applicable.

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

Plans means (only where capitalized) contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Construction Work to be done.

Pre-existing Hazardous Materials means Hazardous Materials that meet all of the following criteria:

- (a) The Hazardous Materials are in, on or under the Project ROW (excluding Developer-Designated ROW) as of the date TxDOT makes available to Developer the affected parcel; and
- (b) The Hazardous Materials are not required to be removed and disposed of due to a Developer Release of Hazardous Materials.

For purposes of this definition, “makes available” means the Effective Date, except for parcels not yet acquired as of the Effective Date.

Preliminary Design Submittal shall mean the submittal by Developer for review and comment by the PSQRF and TxDOT of horizontal and vertical geometrics, bridge clearances and limits of Work as required under Section 2.2.7.5 of the Technical Provisions.

Preliminary Bridge Layouts shall mean the bridge layouts prepared subsequent to the Corridor Structure Type Study Report described in Section 13.1 of the Technical Provisions.

Preliminary Project Baseline Schedule shall mean the original Project Schedule submitted with the Proposal.

Price Proposal shall mean Forms N-1 and N-2 as submitted with the Proposal.

Price shall mean the price set forth in Section 12.1 of the Agreement, as it may be modified from time to time in accordance with the express provisions of the Agreement.

Professional Services shall mean all Work performed under the Agreement other than Construction Work, including the following services and Work: (a) design and engineering; (b) right of way acquisition services; (c) surveying; (d) Utility Adjustment design; and (e) environmental permitting and compliance services.

Professional Services Quality Control Manager (PSQCM) shall mean the person assigned by Developer with responsibility to cause the methods and procedures contained in the approved PSQP to be implemented and followed by Developer's design staff in the performance of the Work, as more particularly described in Section 2.2.7.4 of the Technical Provisions.

Professional Services Quality Review Firm (PSQRF) shall mean the independent firm identified in the Proposal (or such other firm approved by TxDOT in its sole discretion) responsible for performing independent quality assurance reviews and audits of Developer's Design Firm's plans and quality control procedures.

Professional Services Quality Review Manager (PSQRM) shall mean the Professional Services Quality Review Firm's manager responsible for the overall management of the PSQP as more particularly described in Section 2.2.7.4 of the Technical Provisions.

Program Manager shall mean _____ or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Program Manager.

Programmatic Agreement shall mean the agreement between FHWA, the Advisory Council on Historic Preservation and the Texas Historical Commission.

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

Project Baseline Schedule shall mean the schedule consistent with the Completion Deadlines, submitted by Developer as a condition of Notice to Proceed, setting forth the approved schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section 2.1.1.2 of the Technical Provisions.

Project Management Plan shall mean the document complying with BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by TxDOT, describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the TxDOT-approved component parts, plans and documentation described in Section 2 and Attachment 2-1 to the Technical Provisions.

Project Manager shall mean the individual designated by Developer and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer, pursuant to Section 2.2.2 of the Agreement.

Project ROW shall mean the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order.

Project Schedule shall mean one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project Recovery Schedule) for all Work leading up to and including Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 2.1.1.2 of the Technical Provisions.

Project Specific Locations shall mean areas in which Developer proposes Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the NEPA Approval, such as construction work sites, field office locations, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

Project Status Schedule Update shall mean the update of the Project Schedule to reflect the current status of the Project, as more particularly described in Section 2.1.1.2.2 of the Technical Provisions.

Proposal shall mean Developer's response to the RFP.

Proposal Due Date shall mean July 15, 2008, the deadline for submission of the Proposal to TxDOT .

Proposal Pavement Design shall mean a pavement designs submitted as part of the Developer's Proposal.

Proposer shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on December 29, 2006, as amended.

Proprietary Intellectual Property shall mean Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that

derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

Protection in Place shall mean any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

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

Public Information and Communications Plan (PICP) shall mean the plan setting forth procedures by which Developer works with TxDOT to inform, coordinate with, educate and engage Customer Groups, as more particularly described in Section 3.2.1 of the Technical Provisions.

Public Information Coordinator shall mean the person designated by Developer to manage Developer's public information activities as more particularly described in Section 3.2.2 of the Technical Provisions.

Punch List shall mean the itemized list of the Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

Quality Management Plan (QMP) shall mean the set of TxDOT-approved plans for quality management and control of the Project and Work, as described in Section 2.2 of the Technical Provisions.

Quitclaim Deed shall mean a quitclaim deed to be executed by a Utility Owner relinquishing its rights to maintain a Utility in a particular location, as more particularly described in Section 6.2.4.4 of the Technical Provisions.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-00.

Record Drawings means construction drawings and related documentation revised to show significant changes made during the construction process; usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans.

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

Reference Information Documents shall mean those documents listed in Exhibit 19 to the Agreement. Except as expressly provided in the CDA Documents, the Reference Information Documents are not considered CDA Documents and were provided to Developer for informational purposes only and without representation or warranty by TxDOT.

Registered Landscape Architect shall mean a person who is duly licensed and registered by the State to engage in the practice of landscaping.

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

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

Reimbursable Hazardous Materials Costs shall mean Developer's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.9.4 of the Agreement, provided that the 25% and 145% mark-ups allowed under Section 13.7.1 of the Agreement shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 13.7.2 of the Agreement shall be reduced to 7.5%.

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

Replacement Housing Calculation shall mean the opportunity to provide the displaced person with the financial assistance to purchase or rent and occupy a comparable replacement dwelling without involuntarily incurring additional financial means due to the displacement.

Replacement Utility Property Interest shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Request for Change Order shall mean a written notice issued by Developer to TxDOT under Section 13.3.2.5 of the Agreement, advising TxDOT that Developer seeks a Change Order.

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

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

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

Request for Proposals (RFP) shall mean the Request for Proposals issued by TxDOT on March 28, 2008 with respect to the Project, including all exhibits, forms, and attachments thereto and any subsequent addenda.

Reserved Rights shall mean all of the following:

- (a) TxDOT's right to use, possess, develop and enjoy any real and personal property over, on, under or adjacent to the Project ROW for other transportation or related facilities, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways; and
- (b) all right to use, and use of:
 - (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, on, under or adjacent to any Project ROW installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, to the extent not necessary and required for traffic management for the Project or for other project purposes;
 - (ii) any area or space over, on, under or adjacent to the Project ROW for development and operation of any office, commercial, industrial, residential, retail or mixed use real estate project, including revenue-generating service or rest areas;
 - (iii) any equipment, facilities or capabilities for ITS studies or applications installed by or on behalf of TxDOT and the right to install any such equipment, facilities or capabilities; and
 - (iv) any area or space over, on, under or adjacent to the Project ROW for any other commercial or non-commercial development or use.

RFP Documents shall mean all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFP, including Instructions to Proposers, the CDA Documents, the CMA Documents and the Reference Information Documents and any addenda issued in connection therewith.

Right of Entry Agreement shall mean a written agreement between the record title owner and Developer granting TxDOT, Developer or assignees permission to enter the applicable parcel that is to be acquired.

ROW Acquisition Plan shall mean the Developer's plan, approved by TxDOT in accordance with Section 7 of the Technical Provisions, for acquisition of real property for the Project.

ROW Administrator shall mean TxDOT's representative responsible for the management of all matters pertaining to real property for the Project.

ROW Manager shall mean Developer's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project ROW.

Rules shall mean Sections 27.1-27.9 of Title 43, Texas Administrative Code..

Safety and Health Plan shall mean the plan describing Developer's policies, plans and controls to ensure the health and safety of personnel and the general public affected by the Project, as more particularly described in Section 2.5 of the Technical Provisions.

Schematic Design shall mean the roadway schematic plans contained in the Reference Information Documents.

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

Service Line shall mean: (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

Site shall mean Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that Developer may acquire at its own cost and expense in connection with the Project.

Site Investigative Report (SIR) shall mean the report summarizing the Developer's Hazardous Materials investigative work as required by Section 4.3.5 of the Technical Provisions.

Small Bridge shall mean a bridge that is not crossing a Major River Crossing.

Source Code and Source Code Documentation shall mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

Special Deposit and Possession shall mean a declaration of taking in condemnation. This Special Deposit and Possession is a process of acquiring real property through a special condemnation procedure, to be approved by TxDOT and authorized by the Texas Transportation Commission.

State shall mean the State of Texas.

State Highway means a highway designated as part of the state highway system under Section 201.103, Texas Transportation Code.

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

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

Subcontractor Dispute shall have the meaning set forth in Section 19.4 of the Agreement.

Submittal shall mean any document, work product or other written or electronic end product or item required under the CDA Documents to be delivered or submitted to TxDOT.

Substantial Completion shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.1.2 of the Agreement, as and when confirmed by TxDOT's issuance of a Certificate of Substantial Completion.

Substantial Completion Deadline shall mean the deadline set forth in Section 4.2.1 of the Agreement, as such deadline may be adjusted by Change Order pursuant to the Agreement.

Supplemental Utility Assembly shall mean the collection of agreements, plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility Adjustment being added to an existing MUAA by means of a UAAA, as more particularly described in Section 6 of the Technical Provisions.

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

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

Systems Integrator shall mean the contractor, under separate contract to TxDOT, that shall design, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and manual and automated cash collection systems.

Tangible Net Worth shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

Technical Provisions means Book 2 and Book 3, as such documents may be revised or amended pursuant to the Agreement.

Term shall mean the period of time commencing upon issuance by TxDOT of NTP1 and continuing thereafter through Final Acceptance of the Project, unless terminated earlier in accordance with this Agreement.

Termination for Convenience shall mean a termination pursuant to Section 15.1 of the Agreement.

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

Threatened or Endangered Species shall mean any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

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

Tolling Zone shall mean the zone within which a toll transaction takes place, in connection with which Developer shall provide coordination services with the Systems Integrator.

Traffic Control Coordinator shall mean the person designated by Developer to oversee the implementation of the traffic control plans, as more particularly described in Section 18 of the Technical Provisions.

Traffic Management Plan shall mean the plan prepared by Developer for the management of traffic during construction, as more particularly described in Section 18.2.1 of the Technical Provisions.

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

TxDOT Administrative Settlement Committee shall mean the committee established within TxDOT under the direction of the Right of Way Administrator.

TxDOT Authorized Representative shall mean _____.

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

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to make Schematic ROW available within the time period set forth in Section 6.5.3 of the Agreement, and subject to the risk allocation contained therein;
- (c) failure or inability of TxDOT to make DFW-Airport Parcels available prior to issuance of NTP2;
- (d) failure of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters for which response is required under the CDA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the CDA Documents, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following

delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the CDA Documents;

- (e) uncovering, removing and restoring Work pursuant to Section 5.4.3 of the Agreement, if such Work exposed or examined is in conformance with the requirements of the CDA Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT; and
- (f) failure or inability of TxDOT to obtain the USACE Nationwide Permit based on the Schematic Design and the Schematic ROW or a Section 401 Water Quality Certification for the Project by October 1, 2008, provided, however that if the USACE Nationwide Permit is not obtained because individual permits are required, then the failure to obtain the USACE Nationwide Permit shall not be a TxDOT-Caused Delay.

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (g) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct Developer to suspend the Work.

TxDOT-Directed Changes shall mean any changes in the scope of the Work or terms and conditions of the CDA Documents (including changes in the standards applicable to the Work) that increase Developer's costs by more than \$5,000, which TxDOT has directed Developer to perform as described in Section 13.2 of the Agreement.

TxDOT-Initiated VE shall have the meaning set forth in Section 22.1 of the Agreement.

TxDOT-Provided Approvals shall mean the following:

- (a) the NEPA Approval; and
- (b) USACE Nationwide Permit under Section 404 of the Clean Water Act based upon the Schematic Design and the Schematic ROW and certification that the actions permitted under the USACE Nationwide Permit are in compliance with State water quality requirements and other applicable State laws under Section 401 Water Quality Certification (33 U.S.C. §1341)(1986).

TxDOT Release(s) of Hazardous Material means, except as provided below, the introduction in, on or under the Project ROW of Hazardous Material directly by TxDOT, or by its contractors, subcontractors, agents or employees acting in such capacity (other than any Developer-Related Entity). TxDOT Release(s) of Hazardous

Material excludes, however, (i) any Hazardous Materials so introduced that in or part of construction materials and equipment incorporated into the Project; and (ii) any Hazardous Materials so introduced that were in, on or under Developer-Designated ROW.

TxDOT's Recoverable Costs means:

Section 20.0(a) The costs of any assistance, action, activity or Work undertaken by TxDOT which Developer is liable for or is to reimburse under the terms of the CDA Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TXDOT staff and employees performing such action, activity or Work; plus

Section 21.0(b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus

Section 22.0(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus

Section 23.0(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the CDA Documents and continuing until paid.

TxDOT Standard Specifications shall mean the Texas Department of Transportation Standard Specifications for Construction of Highways, Streets and Bridges, adopted by the Texas Department of Transportation including all revisions thereto applicable on the Effective Date.

TxDOT Utility Manual shall mean the Utility Manual issued by the Right of Way Division of TxDOT on November 5, 1990, as the same may be amended, supplemented or replaced from time to time.

Unidentified Utility(ies) shall mean any Utility impacted by the Project (other than a Service Line) which is neither an Identified Utility nor a New Utility, including any Utility which would be a New Utility but for the fact that it is an extension of an Identified Utility.

Uniform Act shall mean the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

User(s) means the registered owner of a vehicle traveling on the Project or any portion thereof.

USACE Nationwide Permit shall mean the nationwide permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1344) for the placement of dredged and fill material into waters of the United States, based upon the Schematic Design and the Schematic ROW.

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

Utility Accommodation Rules (UAR) shall mean the Utility Accommodation Rules issued by TxDOT, at 43 Tex. Admin. Code, Part 1, Chapter 21, Subchapter C, as the same may be amended, supplemented or replaced by TxDOT from time to time.

Utility Adjustment shall mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "**Utility Adjustment**" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

Utility Adjustment Agreement Amendment (UAAA) shall mean an agreement between Developer and the Utility Owner that amends a Master Utility Adjustment Agreement, as more particularly described in Section 6.1.4 of the Technical Provisions.

Utility Adjustment Field Modifications has the meaning set forth in Section 6.4.7 of the Technical Provisions.

Utility Adjustment Concept Plan shall mean a conceptual design document for Utility Adjustments for the entire Project, which shows all of the approximate existing locations, and Developer's recommendation for all of the Adjusted locations, of each

Utility impacted by the Project, as more particularly described in Section 6.3.3 of the Technical Provisions.

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Developer's responsibility pursuant to Section 6.8 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement shall mean a MUAA and/or UAAA, as the context may require.

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

Utility Assembly shall mean the collection of agreements, plans and other information and materials which Developer is required to submit to TxDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same Master Utility Adjustment Agreement and any applicable Amendments), as more particularly described in Section 6.3.4.5 of the Technical Provisions. Depending on the context, the term also refers to Supplemental Utility Assemblies and Abbreviated Utility Assemblies.

Utility Assembly Checklist shall mean a checklist listing the required components of a Utility Assembly, as referenced in Section 6.3.4.5 of the Technical Provisions.

Utility Assembly Number or **Assembly Tracking Number** shall mean the unique number given by the Developer to each Utility Assembly using the form "YYY-U-XXXX." The "YYY" shall refer to the assigned number of the highway and "XXXX" shall refer to the 4-digit number assigned to each Utility Assembly (beginning with 0500 and numbered consecutively thereafter). The Utility Assembly Number shall be referenced on each corresponding Utility Agreement.

Utility Coordinator shall mean the utility staff personnel designated by the Developer to coordinate the utility adjustments, the adjustment agreements, the adjustment costs, the Utility Assemblies, and coordinate all meetings held with either the Utility Owner and/or TxDOT and its consultants.

Utility Design Coordinator (UDC) shall mean the Registered Professional Engineer designated by the Developer to be responsible to coordinate the Utility Adjustment design with the overall highway design features during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

Utility Enhancement shall mean a Betterment or a Utility Owner Project, as referenced in Section 6.8.2 of the Agreement.

Utility Joint Use Agreement or **Utility Joint Use Acknowledgment** shall mean an agreement between TxDOT and a Utility Owner that establishes the rights and obligations of TxDOT and the Utility Owner with respect to occupancy of the Project ROW by a Utility owned by such Utility Owner.

Utility Manager (UM) shall mean the senior staff utility administrator designated by Developer to be responsible for coordination and oversight of Utility operations during the Work, as more particularly described in Section 6.2.3 of the Technical Provisions.

Utility Owner shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Owner Delay shall have the meaning set forth in Section 6.8.5.2 of the Agreement.

Utility Owner Project shall mean the design and construction by or at the direction of a Utility Owner (or by Developer pursuant to Section 6.8.2.3 of the Agreement) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Owner Projects. Utility Owner Projects shall be entirely the financial obligation of the Utility Owner.

Utility Strip Map shall mean the map depicting existing Utilities identified by TxDOT which are included in the Reference Information Documents.

Utility Tracking Report shall mean Developer's Utility Tracking Report.

Value Engineering (VEs) shall have the meaning set forth in Section 22.1 of the Agreement.

Warranty(ies) shall have the meaning set forth in Section 11.1.1 of the Agreement.

Warranty Bond shall have the meaning set forth in Section 8.1.5 of the Agreement.

Warranty Term shall have the meaning set forth in Section 11.1.2 of the Agreement.

Water Quality Specialist shall mean the person designated by the Environmental Compliance Manager to provide expertise in water quality, as more particularly described in Section 4.4.6 of the Technical Provisions.

Work shall mean all of the work required under the CDA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, support services, Utility Adjustment Work to be furnished or provided by Developer, reimbursement of Utility Owners for Utility Adjustment Work furnished or provided by such Utility Owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Developer as required by the CDA Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts which such CDA Documents expressly specify will be performed by Persons other than the Developer-Related Entities.

[END OF DEFINITIONS]

EXHIBIT 20

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2008, (the "Effective Date") by and between the Texas Department of Transportation ("TxDOT"), and ("Developer"). TxDOT and Developer are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, for the DFW Connector Project, dated as of the Effective Date (the "CDA") and the other CDA documentsDRP Governed Agreements, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code.

B. Section 19.3 of the CDA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "Disputes Board") to resolve each Dispute if, as and when, a Dispute arises under the CDA documentsDRP Governed Agreements.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the CDA documentsDRP Governed Agreements, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CDA Documents.

1.2 Reference Section of CDA. Section 19.3 of the CDA, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Agreement to a "Section" mean the Section contained in this Agreement.

Section 2. Purpose and Role of the Disputes Board; Binding Disputes BoardDecision.

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as

defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 19.3 of the CDA. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.

3.1 Selection of Disputes Board Member Candidates and Disputes Board Members.

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications (as defined in Section 4 below) and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a “Disputes Board Member Candidates List”). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of Developer previously approved or deemed approved by TxDOT on or before the Effective Date and (b) Developer accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by Developer on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 19.3.4.2 of the CDA, a Dispute is referred by TxDOT or Developer to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received (or within 7 days after notice of a Fast-Track Dispute is given or received), appoint and engage one of the preapproved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by Developer and (c) a third individual selected pursuant to Section 3.1.3 below. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board Member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1 (each such agreement, upon execution, being referred to herein as a “Disputes Board Member Joinder Agreement” and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment shall, within 15 days after their appointment (or within 7 days after their appointment, if the Dispute for resolution by the

Disputes Board is a Fast-Track Dispute), select the third Disputes Board Member (the “Disputes Board Chair”) from among the remaining candidates that appear on the Parties’ Disputes Board Member Candidate Lists. If the two Disputes Board Members appointed by Developer and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either Developer or TxDOT or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates that appear on the Parties’ Disputes Board Member Candidate Lists. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the qualified and approved candidates remaining on the Parties’ Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board Members or the Chief Administrative Judge (or within 7 days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board’s issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

3.2 Replacing Candidates on a Party’s Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the “Nominating Party”) until complete Disclosure Statements on such individual are furnished to the other Party (the “Evaluating Party”) and the Evaluating Party approves or is deemed to approve such individual for inclusion on the Nominating Party’s Disputes Board Member Candidates List. “Disclosure Statements” shall consist of the proposed Disputes Board Member candidate’s resume of experience and a discussion of the Disputes Board Member

Qualifications as they apply to the proposed candidate. Within 30 days after receipt of a proposed candidate's Disclosure Statements by the Evaluating Party (the "**Disputes Board Member Candidate Evaluation Period**"), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within fifteen days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of Section 3.2.3, if the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession,

and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination "For Cause" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member For Cause or the death or resignation of a Disputes Board Member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement Disputes Board Member has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and Developer may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or Developer may unilaterally terminate the appointment of any Disputes Board Member For Cause.

Provided, however, that if a Disputes Board Member's appointment is terminated For Cause and a Party disagrees that such Disputes Board Member should have been terminated For Cause, such Party may, within 5 Business Days after notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the propriety of such termination.

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a

three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

Section 4. Qualifications and Conduct of Disputes Board Members.

“Disputes Board Member Qualifications,” as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party’s Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the Facility Agreement, in any Contract or the Facility or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party’s Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party’s approval or deemed approval of a proposed candidate for inclusion on the Nominating Party’s Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual’s lack of qualifications under Section 4.1 (except if such individual’s lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party’s Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual’s Disclosure Statements prior to inclusion of such individual on the Nominating Party’s Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for termination and removal of such individual from the Nominating Party’s Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the CDA or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "Commercial Rules" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstances has or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A “Small Claim” is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is \$100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Member shall be released from further service. Thereafter, in the context of the Disputes Board Chair’s resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 19.3 of the CDA to the “Disputes Board” or the “Disputes Board Members” shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than \$100,000, and TxDOT or Developer as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of \$100,000; provided, however, that the amount of \$100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding

whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on an Dispute (other than a Fast-Track Dispute, in which case within 5 days after the final hearing the Fast-Track Dispute), the Disputes Board Chair shall issue the Dispute Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceedings before the Disputes Board that are confidential pursuant to Section 19.3.10 of the CDA. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 19.3.10 of the CDA. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

Section 6. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 19.3 of the CDA.

Section 7. TxDOT and Developer Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the CDA documents ~~DRP Governed Agreements~~. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon Developer) any other documents which are or may become pertinent to the activities of the Disputes

Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Developer Responsibilities. Developer shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Developer's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time require for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 19.3.4.1 of the CDA.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the CDA and thereafter for so long as either Party has any obligation originating under the CDA documentsDRP Governed Agreements until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for

such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Developer for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Developer, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and Developer, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and

requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

Section 10. Nonassignability.

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. No Disputes Board Member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities Under the CDA documentsDRP Governed Agreements or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the CDA documentsDRP Governed Agreements and, subject to the terms and conditions of the CDA documentsDRP Governed Agreements, by Law.

11.3 Damages Waiver. Neither TxDOT nor Developer will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 19.3 of the CDA and any other relevant provisions of the CDA documentsDRP Governed Agreements, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 19.3 of the CDA or any other relevant provision of the CDA documentsDRP Governed Agreements, the CDA or other CDA documentsDRP Governed Agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 24.11 of the CDA. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

Developer:
[Company Name]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TxDOT:

TEXAS DEPARTMENT OF
TRANSPORTATION

By: _____
Amadeo Saenz, P.E.
Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "**Agreement**") is entered into this _____ day of _____, _____ by and between _____ [Specify TxDOT or Developer] (the "**Appointing Party**"), and _____, an individual (the "**Disputes Board Member**").

RECITALS

A. TxDOT and Developer are parties to that certain Comprehensive Development Agreement, for the DFW Connector Project, dated as of the Effective Date (the "CDA") and the other CDA documentsDRP Governed Agreements, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code.

B. Section 19.3 of the CDA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the CDA documentsDRP Governed Agreements.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in Section 19.3, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CDA Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 19.3 of CDA. The Disputes Board Agreement and Section 19.3 of the CDA, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance with the terms and conditions of Section 19.3 of the CDA, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his or resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Developer, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Developer that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 19.3 of the CDA;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 19.3.10 of the CDA.

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating

same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or Developer that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Developer.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Developer. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Developer have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Developer shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

5.9 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

Appointing Party:

Disputes Board Member:

[TxDOT or Developer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Address:

Annex I
to
Disputes Board Member Joinder Agreement

Fees, Costs and Expenses

[to be attached]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The "Expedited Procedures" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "Procedures for Large, Complex Commercial Disputes" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at \$500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 19.3 of the CDA, Section 19.3 of the CDA shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party,

who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(g) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(h) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the CDA Documents.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least 5 Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising is discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the

Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both The Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 24.11 of the CDA.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 19.3 of the CDA, including, but not limited to, specific performance of any obligation under the CDA documentsDRP Governed Agreements.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 19.3.4.1(e) of the CDA.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4.1(e).

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a "consent Disputes Board Decision."

R-37. Acceptance of Delivery of Disputes Board Decision

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 24.11 of the CDA.

R-38. Correction of Errors in Disputes Board Decision

Within 5 Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already decided. The other Party shall be given 5 Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a

clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 19.3.4.1(e)).

R-42. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

R-43. No Suspension for Nonpayment

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board

Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 24.11 of the CDA, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds \$10,000, exclusive of interest and arbitration costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within 7 days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) exchange and premarking of those documents which each Party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a "**Scheduling and Procedure Order**"). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 19.3 of the CDA.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 19.3 of the CDA.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to max

SECTION 17.0 PARTNERING AND DISPUTE RESOLUTION

[to be revised in Addendum #6]

17.1 General Dispute Resolution Provisions

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Maintenance Services.

17.2 Partnering

17.2.1 Schedule; Participation

As soon as possible after issuance of Maintenance NTP1, TxDOT and Maintenance Contractor shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and Maintenance Contractor. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

17.2.2 Confidentiality

Subject to the requirements of the Public Information Act, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute resolution proceeding, unless such statements or materials are admissible or discoverable under applicable Law.

17.3 Dispute Resolution Procedures

17.3.1 Disputes Governed by These Procedures

(a) The Parties agree, in accordance with 43 TEX. ADMIN. CODE. Section 9.6, to be bound by and subject to the procedures established in this Section 17.3 as an agreement regarding dispute resolution procedures that shall survive expiration or earlier termination of the Term and thereafter for so long as either Party has any obligation originating under the CMA documents.

(b) The provisions of this Section 17.3 are intended to accord with Section 201.112 of the Code and the DRP Rules promulgated thereunder.

(c) As used in this Section 17.3, the phrase "the procedures established in this Section 17.3" includes the procedures established in this Section 17.3, the Disputes Board Agreement, the DRP Rules, the Code, and the Texas Government Code.

(d) All Disputes arising under the CMA documents shall be resolved pursuant to the Informal Resolution Procedures and, if not resolved thereby, the Dispute Resolution Procedures, except the following:(i) Any equitable relief sought in Travis County, Texas district court that TxDOT is permitted to bring against Developer under Section 17.3.1.1; and

(ii) Ineligible Matters.

(e) Any disagreement between the Parties as to whether the Informal Resolution Procedures and/or the Dispute Resolution Procedures apply to a particular Dispute shall be treated as a Dispute for resolution in accordance with this Section 17.3.

(f) With respect to any Dispute for resolution in accordance with the procedures established in this Section 17.3, the Parties agree that (i) such Dispute must be asserted in writing to the other Party prior to the running of the applicable statute of limitations and (ii) provided that this is done, the applicable statute of limitations shall be tolled until the 30th day after conclusion of the last such procedure applicable to such Dispute.

17.3.1.1 Jurisdiction of Travis County, Texas District Courts

TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Developer, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law

17.3.1.2 Matters Ineligible for Dispute Resolution Procedures

The Dispute Resolution Procedures shall not apply to the following (collectively, "Ineligible Matters"):

(a) Any matters that the CMA documents expressly state are final, binding or not subject to dispute resolution;

(b) Any claim or dispute that does not arise under the CMA documents;

(c) Any claim that is not actionable against TxDOT by Developer on its own behalf or on behalf of its Subcontractors in accordance with Section 17.4;

(d) Any claim for indemnity under Section 18;

(e) Any claim for injunctive relief;

(f) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance;

(g) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act;

(h) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Section 17);

(i) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this Section 17.3 do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in this Section 17.3 applicable;

(j) Any claim for, or dispute based on, remedies expressly created by statute; and

(k) Any Dispute that is actionable only against a Surety.

17.3.2 Informal Resolution As Condition Precedent

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by a district court, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the informal resolution procedures described in Section 17.3.3 other than Section 17.3.3.3 (collectively, the "Informal Resolution Procedures"). Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for the Informal Resolution Procedures applicable to any subsequently arising Disputes.

17.3.3 Informal Resolution Procedures

17.3.3.1 Notice of Dispute to Designated Agent

(a) A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a written notice on the responding Party's designated agent. Unless otherwise indicated by written notice from one Party to the other Party, each Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing:

(i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute;

the Dispute;

(ii) The date of the act, inaction or omission giving rise to

(iii) An explanation of the Dispute, including a description of its nature, circumstances and cause;

CMA documents;

(iv) A reference to any pertinent provision(s) from the

(v) If applicable and then known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected);

(vi) If applicable, an analysis of the Facility Schedule and Milestone Schedule Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Milestone Schedule Deadlines);

(vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed;

and

(viii) The claiming Party's desired resolution of the Dispute;

relevant.

(ix) Any other information the claiming Party considers

(b) The notice shall be signed by the designated representative of the Party asserting the Dispute, and shall constitute a certification by the Party asserting the Dispute that:

(i) The notice of Dispute is served in good faith; and

(ii) To the then current knowledge of such Party, except as to matters stated in the notice of Dispute as being unknown or subject to discovery, (1) all supporting information is reasonably believed by the Party asserting the Dispute to be accurate and complete and (2) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the Party asserting the Dispute reasonably believes it is entitled; and

(iii) The designated representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

(c) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation.

Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing as appropriate, including execution of Change Orders or other documentation as needed, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

(d) The Party asserting the Dispute shall not be prejudiced by its initial statement of the Dispute and shall have the ability at any time during the Informal Resolution Procedures and Dispute Resolution Procedures to modify its statement of the Dispute and/or the amount of money or other right, remedy or relief sought.

17.3.3.2 Fast-Track Disputes

With respect to any Dispute that the Parties mutually designate as a Fast-Track Dispute, the Informal Resolution Procedures shall be abbreviated in that the procedure contemplated in Section 17.3.3.3 shall not be required.

17.3.3.3 CEO / Executive Director Meetings

Commencing within 10 Business Days after the notice of Dispute is served and concluding 10 Business Days thereafter, the Chief Executive Officer of Developer and the Executive Director or the assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Developer and TxDOT shall memorialize the resolution in writing, including execution of Change Orders or other documentation as appropriate, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute.

17.3.3.4 Failure to Resolve Dispute With Informal Resolution Procedures

If a Dispute is not timely resolved under the Informal Resolution Procedures, then within 15 days (seven days for Fast-Track Disputes) after the conclusion of the time periods for Informal Resolution Procedures, if such Dispute was not resolved to the Parties' satisfaction:

(i) The Parties may mutually agree to initiate mediation or other alternative dispute resolution process in accordance with Section 17.3.7; or

(ii) Either Party may refer the Dispute to the Disputes Board for resolution pursuant to Section 17.3.4.2.

17.3.4 Disputes Board; Finality of Disputes Board Decision

17.3.4.1 Disputes Board Agreement

(a) The Parties executed the Disputes Board Agreement on even date herewith. The Disputes Board Agreement governs all aspects of the Disputes Board, as well as all rights and responsibilities of the Parties with respect to the Disputes Board, that are not otherwise addressed in this Section 17.3, the DRP Rules and the Code.

(b) If the composition of either Party's Disputes Board Member Candidates' List has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement.

(c) The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue written findings of fact, written conclusions of law, and a written decision to TxDOT and Developer.

(d) The Disputes Board shall have the authority to resolve any Dispute other than Ineligible Matters and any actions for equitable relief in district court that TxDOT is permitted to bring against Developer under Section 17.3.1.1.

(e) The Disputes Board shall not have the authority to order that one Party compensate the other Party for attorneys' fees and expenses.

(f) If a Disputes Board Decision awards an amount payable by one Party to the other, such amount became or shall become due and payable on the date required for payment in accordance with the applicable DRP Governed Agreement. If the date of payment is not specified in a DRP Governed Agreement, the payment shall be due ten days after the date the Final Order Implementing Decision for such decision becomes final under Section 17.3.6 (or, if the tenth day is not a Business Day, the next Business Day).

(g) Except for those matters subject to Section 17.8, interest at LIBOR on an amount payable by one Party to the other shall accrue beginning on the date such amount was due and continuing until the date such amount is paid.

(h) If the notice of Dispute fails to meet the certification requirements under Section 17.3.3.1(b), on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete written certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

17.3.4.2 Submission of Dispute to Disputes Board

(a) Within 15 days (seven days for Fast-Track Disputes) after the end of the last time period under the Informal Resolution Proceedings, either Party may refer a Dispute to the Disputes Board for resolution by serving written notice on the other Party. The notice shall include the same information as a notice of Dispute issued

under Section 17.3.3.1(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a written response upon the claiming Party's designated agent. The response shall include the same information as the notice of Dispute issued under Section 17.3.3.1(a), to the extent applicable; shall be signed by the designated representative of the responding Party; and shall constitute a certification by the responding Party that:

(i) The response to the claiming Party's notice of Dispute is served in good faith;

(ii) All supporting information is reasonably believed by the responding Party to be accurate and, except as otherwise reasonably explained in the response, complete; and

(iii) The responding Party disputes the amount of money or other right, remedy or relief to which the claiming Party believes it is entitled.

(b) Neither Party may attempt to seek resolution of a Dispute by the Disputes Board or litigate the merits of any Dispute in court if such Dispute is not timely referred to the Disputes Board within the 15 day time period under Section 17.3.4.2(a) above, except for Ineligible Matters and Disputes for which TxDOT is entitled to seek relief in court.

(c) The responding Party shall also assert in its response any challenge it may then have to the Dispute Board's authority to resolve the Dispute if the responding Party then believes in good faith that the Dispute is an Ineligible Matter.

17.3.4.3 Finality of Disputes Board Decision

Upon completion of the remainder of the procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

17.3.5 SOAH Administrative Hearings and Final Orders

17.3.5.1 Appeal of Disputes Board Decision

(a) If, within 20 days after the Disputes Board's issuance of the Disputes Board Decision to TxDOT and Developer (the "**Appeal Period**"), either Party is dissatisfied with the Disputes Board Decision due to a good faith belief that Disputes Board Error occurred, (i) Developer may request the Executive Director to seek and/or (ii) TxDOT may seek a formal administrative hearing before SOAH pursuant to Texas Government Code, Chapter 2001, and Section 201.112 of the Code, solely on the grounds that Disputes Board Error occurred. Upon receipt of Developer's request for a formal administrative hearing before SOAH, the Executive Director shall, as a purely ministerial act, refer the matter to SOAH within ten Business Days after receipt of Developer's request.

(b) If Developer does not request, and TxDOT does not seek for itself, a formal administrative hearing before SOAH under Section 17.3.5.1(a) within the Appeal Period, then within ten Business Days after the expiration of the Appeal Period, the Executive Director shall issue the Final Order Implementing Decision as a purely ministerial act. If the Executive Director fails to issue the Final Order Implementing Decision within this ten Business Day time period, the Disputes Board Decision shall become effective as the Final Order Implementing Decision for all purposes on the next Business Day.

(c) Neither Party may attempt to:

(i) Seek an administrative hearing before SOAH on any Dispute after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH pursuant to subsection (a) or subsection (b);

(ii) Seek rehearing in any forum of a Dispute that is the subject of a Disputes Board Decision after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH pursuant to subsection (a) or subsection (b); or

(iii) Resubmit to the Disputes Board or litigate in court any Dispute that was the subject of and resolved by a prior final Disputes Board Decision.

17.3.5.2 Appeal of Disputes Board Error to SOAH

"Disputes Board Error" means one or more of the following:

(a) The Disputes Board failed, in any material respect, to properly follow or apply the procedures for handling, hearing and deciding on the Dispute established under this Section 17.3 and such failure prejudiced the rights of a Party; or

(b) The Disputes Board Decision was procured by, or there was evident partiality among the Disputes Board Members due to, a Conflict of Interest, Misconduct, corruption or fraud.

17.3.5.3 SOAH Proceeding and ALJ Proposal For Decision

(a) Upon referral to SOAH of the question of whether Disputes Board Error occurred, the ALJ shall conduct a hearing solely on the question of whether Disputes Board Error occurred. The Disputes Board's written findings of fact, conclusions of law and Disputes Board Decision; any written dissenting findings, recommendations or opinions of a minority Disputes Board Member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue to the Executive Director and Developer the ALJ's written proposal for decision as to whether Disputes Board Error occurred.

(b) Each Party may file exceptions to the proposal for decision with the ALJ no later than seven days after issuance of the ALJ's proposal for decision and, in response to a Party's exceptions, the other Party may file a reply to the excepting Party's exceptions with the ALJ no later than 14 days after issuance of the proposal for decision. The ALJ shall review all exceptions and replies and notify TxDOT and Developer no later than 21 days after issuance of the proposal for decision whether the ALJ recommends any changes to the proposal for decision, amends the proposal for decision in response to exceptions and replies to exceptions, and/or corrects any clerical errors in the proposal for decision. The ALJ shall reissue its written proposal for decision to the Executive Director and TxDOT, together with written findings of fact and conclusions of law, if revised from those previously furnished to the Parties.

(c) Unless a Party in good faith challenges the Disputes Board's authority to resolve the Dispute because the Dispute is an Ineligible Matter (1) in the proceedings before the Disputes Board, (2) as a Disputes Board Error during the Appeal Period, (3) in the SOAH proceeding or (4) in exceptions to the ALJ's proposal for decision timely filed under Section 17.3.5.3(b) above, any objection to the Disputes Board's authority to resolve the applicable Dispute shall be deemed waived by such Party.

17.3.5.4 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision:

(i) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that Disputes Board Error occurred, the Executive Director shall issue a Final Order Vacating Decision. A "Final Order Vacating Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code); ruling that the Disputes Board Decision is invalid, void and of no force and effect; and remanding the Dispute to the Disputes Board for reconsideration. If the nature of the Disputes Board Error was a Conflict of Interest, Misconduct fraud or corruption of a Disputes Board Member, the remanded Dispute will be reconsidered by a reconstituted Disputes Board after removal of such Disputes Board Member; or

(ii) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that no Disputes Board Error occurred, the Executive Director shall issue a Final Order Implementing Decision. A "Final Order Implementing Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the written explanatory statement required under Section 201.112(c) of the Code), and approving and fully implementing the Disputes Board Decision.

(b) The Parties agree and acknowledge that the Executive Director's issuance of either type of Final Order is a purely ministerial function of the Executive Director. If the Executive Director fails to issue one or the other type of Final Order within the foregoing 28 Day time period, then on the next Business Day:

(i) If the ALJ determined that Disputes Board Error occurred, a Final Order Vacating Decision shall be deemed to have been issued for all purposes by the Executive Director which (1) adopted the ALJ's proposal for decision; (2) ruled that the Disputes Board Decision is invalid, void and of no force and effect; and (3) remanded the Dispute to the Disputes Board for reconsideration (or, if the nature of the Disputes Board Error was a Conflict of Interest or Misconduct of a Disputes Board Member, a reconstituted Disputes Board after removal of such Disputes Board Member) without Disputes Board Error; or

(ii) If the ALJ determined that no Disputes Board Error occurred, a Final Order Implementing Decision shall be deemed to have been issued for all purposes by the Executive Director which adopted the ALJ's proposal for decision and fully implemented the Disputes Board Decision.

17.3.6 Judicial Appeal of Final Orders Under Substantial Evidence Rule

Each issued or deemed issued Final Order Implementing Decision and Final Order Vacating Decisions shall be considered a final order for purposes of Developer's ability to seek judicial appeal thereof under Section 201.112(d) of the Code under the substantial evidence rule. TxDOT and Developer hereby agree that (a) pursuant to Section 2001.144(a)(4) of the Texas Government Code, each Final Order Implementing Decision and Final Order Vacating Decision shall be final (and therefore eligible for appeal under Section 201.112(d) of the Code) on the date such final order is issued or deemed issued by the Executed Director and (b) pursuant to Section 2001.145 of the Texas Government Code, TxDOT and Developer hereby agree that the filing of a motion for rehearing shall not be a prerequisite for appeal of such final orders under Section 201.112(d) of the Code.

17.3.7 Mediation or Other Alternative Dispute Resolution

Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Developer and TxDOT shall share equally the expenses of the mediation or other alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30 day period, then either Party can, on or after the 31st day, cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 17.3 for processing

a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

17.3.8 Confidential Information

17.3.8.1 All discussions, negotiations, and Informal Resolution Procedures between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, or Informal Resolution Procedures, shall be considered confidential and protected from disclosure pursuant to the Texas Public Information Act and Chapter 154 of the Texas Civil Practices and Remedies Code, and not subject to disclosure by either Party.

17.3.8.2 With respect to all discussions, negotiations, testimony and evidence between the Parties and/or in a proceeding before the Disputes Board, an administrative hearing before an ALJ or a judicial proceeding in court:

(a) All information that has been deposited into Escrow pursuant to Section 4.3.2 of the ITP shall be treated as confidential by the Parties and the Disputes Board, the ALJ and the court, as applicable, and, further, shall be subject to a protective order issued by the Disputes Board, the ALJ or the court, as applicable, to protect such information from disclosure to third Persons.

(b) Either or both Parties may also request a protective order in any Disputes Board proceeding, SOAH administrative hearing or judicial proceeding to prohibit disclosure to third Persons of any other information that such Party or Parties believe(s) is confidential. Whether such a protective order will be issued by the Disputes Board, the ALJ or the court, as applicable, shall be determined under the standards set forth in the Texas Rules of Evidence, the Texas Rules of Civil Procedure, Section 223.204 of the Code and the Public Information Act.

~~17.3 Disputes Governed by this Section~~

~~17.4 If partnering fails to resolve an issue and Maintenance Contractor elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the dispute resolution procedures established thereunder as described in Title 43 of the Texas Administrative Code, Section 9.2, as the same may be amended from time to time. Section 17 shall not apply to: (a) Claims that are not actionable against TxDOT by Maintenance Contractor on its own behalf or on behalf of any of its Subcontractors in accordance with Section 17.4, (b) Claims arising solely in tort; (c) Claims for indemnity under Section 16; (d) Claims for injunctive relief; (e) Claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (f) any Dispute based on remedies expressly created by statute; or (g) any Dispute that is actionable only against a Surety.~~

17.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes

For purposes of this Section 17, a "Subcontractor Dispute" shall include any Dispute by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against Maintenance Contractor that is actionable by Maintenance Contractor against TxDOT and arises from the Maintenance Services, materials or other services provided or to be provided under the CMA Documents. If Maintenance Contractor determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

(a) Maintenance Contractor shall identify clearly in all submissions pursuant to this Section 17, that portion of the Dispute that involves a Subcontractor Dispute.

(b) Failure of Maintenance Contractor to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by Maintenance Contractor, as provided hereunder, shall constitute a release and discharge of TxDOT by Maintenance Contractor on account of, and with respect to, such Subcontractor Dispute.

(c) Maintenance Contractor shall require in all Subcontracts that all Subcontractors of any tier: (a) agree to submit Subcontractor Disputes to Maintenance Contractor in a proper form and in sufficient time to allow processing by Maintenance Contractor in accordance with this Section 17; (b) agree to be bound by the terms of this Section 17 to the extent applicable to Subcontractor Disputes; (c) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 17 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Maintenance Contractor; (d) agree

that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through Maintenance Contractor, shall be stayed until completion of all steps required under this subsection; and (e) agree that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right or cause of action by any Subcontractor against TxDOT. Subcontractors shall, at all times, have rights and remedies only against Maintenance Contractor.

~~17.6~~ ~~Mediation or Other Alternative Dispute Resolution~~

~~Maintenance Contractor and TxDOT, by mutual agreement, may at any time refer the Dispute to mediation or any other form of alternative dispute resolution that is acceptable to all Parties to the Dispute. Maintenance Contractor and TxDOT shall share equally the expenses of the mediator or other alternative dispute resolution process.~~

17.6 17.5 **Subsequent Proceedings**

17.6.1 17.5.1 **Exclusive Jurisdiction and Venue**

Maintenance Contractor agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the CMA Documents or the Project shall be the Travis County District Court. Maintenance Contractor waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's jurisdiction, regardless of Maintenance Contractor's residence or domicile, for any such action or proceeding.

17.6.2 17.5.2 **Admissibility of Disputes Resolution Proceedings**

The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties' submittals and any TxDOT determinations shall be in the discretion of the appropriate administrative officer or the court in accordance with applicable Law.

17.7 17.6 **Continuation of Maintenance Work**

At all times during this dispute resolution process or any subsequent administrative, arbitration or court proceeding, Maintenance Contractor and all Subcontractors shall proceed with the Maintenance Services, without delay, in accordance with this Capital Maintenance Agreement, and as directed by TxDOT. Maintenance Contractor acknowledges that it shall be solely responsible for any Project delay that results from its actions or inactions during the dispute resolution process, even if Maintenance Contractor's position in connection with the Dispute ultimately prevails. In addition, all Parties shall continue to comply with all provisions of the CMA Documents, the Governmental Approvals and applicable Law.

17.817.7 **Records Related to Claims and Disputes**

Throughout the course of any Maintenance Services that are the subject of any Claim or Dispute, Maintenance Contractor shall keep separate and complete records as required by Section 18. These records shall be retained for a period of not less than five years from the date of resolution of the Claim or Dispute.

17.917.8 **Interest**

This Section 17.98 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

In the event Maintenance Contractor elects to pursue a formal Dispute with TxDOT under this Section 17, TxDOT shall notify Maintenance Contractor whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. Except as provided in this paragraph, a payment becomes overdue and begins to accrue interest on the 31st day after the date TxDOT receives a contract claim pursuant to Texas Transportation Code, Section 201.112 and the dispute resolution procedures established thereunder. If the resolution of a disputed claim results in the award of an amount which is less than the amount requested in the original claim then the Maintenance Contractor shall submit a corrected invoice. The unpaid balance of the corrected invoice becomes overdue and begins to accrue interest on the 31st day after TxDOT receives the corrected invoice.

17.1017.9 **Attorney Fees**

This Section 17.409 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251.

A party shall pay the attorneys fees of the other party for Disputes brought pursuant to this Section 17 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

Attachment 7

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

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

AAP	AASHTO Accreditation Program
AASHTO	American Association of State Highway and Transportation Officials
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM/AVI	Automatic Coin Machine / Automatic Vehicle Information
ACORD	Association for Cooperative Operations Research and Development
ACT	Antiquities Code of Texas
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADT	Average Daily Traffic
AISC	American Institute of Steel Construction, Inc
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
ATC	Alternative Technical Concept
ATT/AVI	Attendant / Automatic Vehicle Identification
AUI	Advanced Utility Installation
AVI	Automatic Vehicle Identification
AWS	American Welding Society
BI	Base Index
BMP	Best Management Practice
BO	Biological Opinion
CADD	Computer Aided Drafting and Design
CCTV	Closed Circuit Television
CDA	Comprehensive Development Agreement
CD-R	Compact Disc Recordable
CD ROM	Compact Disc Read Only Memory
CEPP	Comprehensive Environmental Protection Program
CERCLA	Comprehensive Environmental Response Compensation and Liability Act

CFR	Code of Federal Regulations
CMP	Construction Monitoring Plan
CO	Carbon Monoxide
CQAF	(Independent) Construction Quality Acceptance Firm
CQAM	(Independent) Construction Quality Acceptance Manager
CQP	Construction Quality Program
CRCP	Continuous Reinforced Concrete Pavement
CSJ	Control Section Job
CSTM	Materials and Pavements Section of TxDOT Construction Division
CWA	Clean Water Act
CZP	Contributing Zone Plan
DBE	Disadvantaged Business Enterprise
DSS	Decent Safe and Sanitary (dwelling)
ECI	Environmental Compliance Inspector
ECM	Environmental Compliance Manager
ECMP	Environmental Compliance and Mitigation Plan
EDMS	Electronic Data Management System
EMR	Environmental Monitoring Report
EMS	Environmental Management System
ENR CCI	Engineering News Record 20 City Construction Cost Index
EP	Extraction Procedure (toxicity)
EPD	Escrowed Proposal Documents
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Plan
ESA	Endangered Species Act of 1973, as amended
ESAL	Equivalent Single-Axle Load
ET	Environmental Team
ETCS	Electronic Toll Collection System
FAPG	Federal-Aid Policy Guide
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FM	Farm to Market Road
FOB	Field Operation Building
FONSI	Finding of No Significant Impact
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GIS	Geographical Information System

HEC	Hydraulic Engineering Circular
HVAC	Heating Ventilation and Air Conditioning
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
ISDN	Integrated Services Digital Network
ISI	Initial Serviceability Index
ISO	International Standards Organization
ITP	Instructions to Proposers
ITS	Intelligent Traffic Sub-system
IVHS	Intelligent Vehicle Highway System
IWP	Investigative Work Plan
JSA	Job Safety Analysis
LRFD	Load and Resistance Factor Design
LSLS	Licensed State Land Surveyor
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSE	Mechanically Stabilized Earth
MUAA	Master Utility Adjustment Agreement
NAVD	North American Vertical Datum
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NCR	Non-Conformance Report
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NICET	National Institute for Certified Engineering Technicians
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration
OVT	Owner Verification Tests
PA	Programmatic Agreement
PCO	Potential Change Order
PCS	Pavement Condition Survey

PH	Percent Hydrogen
PM	Project Manager
PMP	Project Management Plan
PSQRF	Professional Services Quality Review Firm
PSQRM	Professional Services Quality Review Manager
PSQCM	Professional Services Quality Control Manager
PSQP	Professional Services Quality Program
PUA	Possession and Use Agreement
PVC	Polyvinyl Chloride
QC / QRP	Quality Control / Quality Review Program
QMP	Quality Management Plan
QS	Qualifications Submittal
RCP	Reinforced Concrete Pipe
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RHA	Rivers and Harbors Act
ROE	Right of Entry
ROW	Right of Way
ROWIS	Right of Way Information System
ROW PM	Right of Way Project Manager
RPLS	Registered Professional Land Surveyor
RTP	Ramp Toll Plazas
SDPP	Special Deposit and Possession Procedure
SEC	Securities and Exchange Commission
SF	Square Foot
SH	State Highway
SHPO	State Historic Preservation Officer
SI	System Integrator
SSCB	Single Slope Concrete Barrier
SSTR	Single Slope Traffic Railing
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TAS	Texas Accessibility Standards
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TCLP	Toxicity Characteristic Leaching Procedure
THC	Texas Historical Commission

TIM/OS	Turnpikes Intelligent Management / Operation System
TL	Testing Level
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TP	Technical Provisions
TPDES	Texas Pollutant Discharge Elimination System
TSI	Terminal Serviceability Index
TxDOT	Texas Department of Transportation
UAAA	Utility Adjustment Agreement Amendment
UAP	TxDOT Utility Accommodation Policy
UCS	Utility Coordination Specialist
UDC	Utility Design Coordinator
UM	Utility Manager
UPA	Utility and Personnel Access-way
UPS	Uninterruptible Power Supply
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UST	Underground Storage Tank
VE	Value Engineering
VMS	Variable Message Sign
WBS	Work Breakdown Structure

Act shall have the meaning set forth in Recital A of the Capital Maintenance Agreement.

Additional Properties shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of the Schematic ROW, that will be acquired in connection with the Project, including (a) rest area sites, (b) the Developer-Designated ROW, and (c) any additional real property outside of the Schematic ROW that must be acquired due to a TxDOT-Directed Change issued under the Comprehensive Development Agreement, including any air space, surface rights and subsurface rights within such additional real property area that TxDOT directs Developer to acquire for the Project.

Adjacent Work shall mean any project, work, improvement or development to be planned, designed or constructed which could or does impact the Project and/or is adjacent to the Project. Examples of Adjacent Work include proposed subdivisions,

other roads constructed by Governmental Entities, site grading and drainage and other development improvement plans and Utility projects.

Affiliate shall mean:

- (a) any shareholder, member, partner or joint venture member of Maintenance Contractor,
- (b) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Maintenance Contractor, or any of its respective shareholders, members, partners or joint venture members; and
- (c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Maintenance Contractor, (ii) any of the shareholders, members, partners or joint venture members of Maintenance Contractor; or (iii) any Affiliate of Maintenance Contractor under clause (b) of this definition.

For purposes of this definition the term “control” shall mean the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. **Affiliated** shall mean having the status of an Affiliate.

Appeal Period has the meaning set forth in Section 17.3.5.1(a) of the Capital Maintenance Agreement.

Asset Condition Score shall mean the score (from one to five) assigned by Maintenance Contractor following Maintenance Contractor’s Audit Inspection, which records, for each Maintained Element and for all of the Auditable Sections audited in any quarter, the extent to which Maintenance Contractor has met the Target for each measurement record according to the criteria set forth in Section 1900 of Exhibit 2.

Auditable Section shall mean a defined section of the Project for the purpose of audit, inspection and measurement during performance of the Maintenance Services. An Auditable Section includes all travel lanes including mainlanes, ramps and frontage roads of the roadway operating in one direction over a length of 0.1 miles in length, together with all Maintained Elements of the Project associated with such 0.1 mile length.

Audit Inspection shall mean a detailed inspection of the specified proportion of Auditable Sections undertaken quarterly by Maintenance Contractor as part of the Maintenance Services in accordance with Section 1900 of Exhibit 2 to establish an Asset Condition Score for each Maintained Element and verify compliance with the Performance Requirements.

Authorized Representative shall have the meaning set forth in Section 19.5.1 of the Capital Maintenance Agreement.

Base Index shall have the meaning set forth in Section 8.1.3(a) of the Capital Maintenance Agreement.

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

Capital Asset Replacement Work shall mean the Work described in Section 3.2 of the Capital Maintenance Agreement.

Capital Asset Replacement Work Submittal shall mean the submittal described in Section 3.2.2 of the Capital Maintenance Agreement.

Capital Maintenance Agreement or **CMA** shall mean that certain Capital Maintenance Agreement executed by TxDOT and Maintenance Contractor providing for Maintenance Contractor to perform, at TxDOT's sole option, certain Maintenance Services for the Project, to which this Exhibit 1 is attached, including any and all amendments thereto.

Category 1 Defect means a Defect which requires prompt attention because it represents an immediate or imminent hazard, or there is a risk of immediate or imminent structural deterioration, or there is an immediate or imminent risk of damage to a third party's property or equipment, or there is an immediate or imminent risk of damage to the environment.

Category 2 Defect means any Defect other than a Category 1 Defect.

CDA Documents shall have the meaning set forth in Section 1.2.1 of the Comprehensive Development Agreement.

CMA Documents shall have the meaning set forth in Section 1.2.1 of the Capital Maintenance Agreement.

Change in Law shall mean: (a) the enactment, adoption, modification, repeal or other change in any Law that occurs after the Proposal Due Date, including any change in the judicial or administrative interpretation of any Law, or (b) adoption of any new Law, which in each case is materially inconsistent with Laws in effect on the Proposal Due Date. The term "**Change in Law**" excludes: (i) any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Due Date and (ii) any change in or new Law relating to Maintenance Contractor's general business operations, including licensing and registration fees, income taxes, gross receipts taxes, social security, medicare, unemployment and other payroll-related taxes.

Change Order shall mean a written order issued by TxDOT to Maintenance Contractor delineating changes in the Maintenance Services within the general scope of the Capital Maintenance Agreement Documents or in the terms and conditions of the CMA Documents in accordance with Section 10 of the Capital Maintenance Agreement and establishing, if appropriate, an adjustment to the Maintenance Price or a time extension.

Claim shall mean: (a) a demand by Maintenance Contractor, which is or potentially could be disputed by TxDOT, for a time extension under the CMA Documents or payment of money or damages from TxDOT to Maintenance Contractor or (b) a

demand by TxDOT, which is or potentially could be disputed by Maintenance Contractor, for payment of money or damages from Maintenance Contractor to TxDOT.

Code shall mean Chapter 223 of the Texas Transportation Code.

Commercial Rules has the meaning set forth in the Disputes Board Agreement.

Comprehensive Development Agreement shall have the meaning set forth in Recital I of the Capital Maintenance Agreement.

Conflict of Interest means, with respect to any individual who is or is proposed to be a Disputes Board Member, any one or more of the following:

(a) Such individual is currently or was in the past employed by any member of the Conflicts Group, except that service as a member of other disputes review boards on other contracts or retention as an independent consultant on other contracts does not create a Conflict of Interest so as to preclude an individual from serving as a Disputes Board Member;

(b) Such individual has or is reasonably likely to have a pecuniary interest in the outcome of the applicable Dispute or such individual has any (i) ownership interest in any member of the Conflicts Group, except a remote interest or (ii) financial interest in any of the DRP GovCMA documents/signed Agreements or any Contract (except that such individual's interest in receiving, and receipt of, payment for service on the Disputes Board shall not be considered a financial interest for purposes of this definition), in either case except for a remote interest. An ownership interest is remote only if it is less than 0.5% of the issued and outstanding shares or other legal or beneficial ownership interest, or less than 0.5% of the issued and outstanding indebtedness, of a member of the Conflicts Group. Mere use of the Facility shall not constitute a pecuniary, ownership or financial interest for purposes of this definition;

(c) Such individual shall not have had substantial prior involvement in any aspect of the CDA or CMA, a Contract or the Project of a nature which could reasonably be expected to affect his or her ability to impartially resolve Disputes;

(d) Such individual shall not know of any reason, including but not limited to the existence of any of the Conflicts of Interest as described in this definition, why he or she cannot be impartial in resolving Disputes; and

(e) In addition to the Conflicts of Interest described above, any other circumstance arising out of such individual's existing or past activities, business interests and/or contractual relationships with any member of the Conflicts Group such that such individual is or is reasonably likely to be unable to render a Disputes Board Decision impartially or such individual's objectivity in performing his or her role on the Disputes Board is or is reasonably likely to be impaired.

Conflicts Group means a Party, a Party's Affiliates and its and their agents, contractors, subcontractors or suppliers and any other Person that is a party to a Contract.

Contract means any agreement, and any supplement or amendment thereto, by Maintenance Contractor with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Utility Agreements.

Cost and Schedule Proposal shall mean Maintenance Contractor's proposal furnished to TxDOT pursuant to a Request for Change Proposal in accordance with Section 10.2.1 of the Capital Maintenance Agreement.

Customer Groups shall mean groups, Persons and entities having a perceived stake or interest in the Project, including: the media, elected officials, Governmental Entities, general public residing or working within the general vicinity of the Project or traveling within or across the limits of the Project, business owners within or adjacent to the Project, Utility Owners, operating railroads, community groups, local groups (neighborhood associations, business groups, chambers of commerce, convention and visitors bureaus, contractors, etc.) and other Persons or entities affected by the Project, including those identified in Section 3.2.4 of the CDA Technical Provisions.

Day or **day** shall mean calendar days unless otherwise expressly specified.

Defect shall mean, in connection with the Maintenance Services, a defect, whether by design, construction, installation, repair, rehabilitation, reconstruction, operation, damage or wear, affecting the condition, use, functionality or operation of any Maintained Element, which would cause or have the potential to cause one or more of the following:

- (i) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of users of the Project;
- (ii) a structural deterioration of the affected Maintained Element or any other part of the Project affected by it;
- (iii) damage to the property or equipment of TxDOT or a third party;
- (iv) damage to the environment;
- (v) failure of the affected Maintained Element to meet a Performance Requirement; or
- (vi) failure of a Maintained Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table.]

Design Documents shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the performance of design services required under the Capital Maintenance Agreement in accordance with the CMA Documents, the Governmental Approvals and applicable Law.

Developer shall mean _____ a _____, together with its successors and assigns.

Developer-Designated ROW shall mean any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project and which acquisition is approved by TxDOT to be acquired at Developer's cost and expense. The term specifically includes any easements required for drainage for the Project, except that TxDOT shall be responsible for the purchase price of drainage easements approved by TxDOT. The term specifically includes any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes the Replacement Utility Property Interests, any temporary easements or other temporary real property interests that Developer may deem necessary or advisable to acquire, at its own cost and expense, for excessive work space, contractor lay-down areas, material storage areas, or other convenience of Developer.

Developer Event of Default shall mean Event of Default defined under the Comprehensive Development Agreement.

Developer-Related Entities shall mean (a) Developer, (b) Developer's shareholders, partners, joint venturers and/or members, (c) Subcontractors to the Developer (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Directive Letter shall have the meaning set forth in Section 10.1.1.2 of the Capital Maintenance Agreement.

Dispute means any Claim, dispute, disagreement or controversy between TxDOT and Maintenance Contractor concerning their respective rights and obligations under the CMA documents ~~DRP Governed Agreements~~ including concerning any alleged breach or failure to perform and remedies.

~~shall mean a "Contract Claim", as such term is used and defined in Texas Transportation Code Section 201.112, as the same may be amended from time to time. Disputes include Subcontractor Disputes.~~

Dispute Resolution Procedures means collectively, the procedures established under Sections 17.3.4 and 17.3.5 of the Capital Maintenance Agreement and in Section 5 of

the Disputes Board Agreement and the applicable portions of Section 201.112 of the Code and the DRP Rules. None of the Informal Resolution Procedures are included in the Dispute Resolution Procedures.

Disputes Board has the meaning set forth in the Disputes Board Agreement.

Disputes Board Agreement means the agreement in the form attached to the Capital Maintenance Agreement as Exhibit 15.

Disputes Board Chair has the meaning set forth in the Disputes Board Agreement.

Disputes Board Decision has the meaning set forth in the Disputes Board Agreement.

Disputes Board Error has the meaning set forth in Section 17.3.5.2 of the Capital Maintenance Agreement.

Disputes Board Member means an individual serving as one of the three members of the Disputes Board.

Disputes Board Member Candidate Evaluation Period has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Candidates' List has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Joinder Agreement has the meaning set forth in the Disputes Board Agreement.

Disputes Board Member Qualifications has the meaning set forth in the Disputes Board Agreement.

Draw Request shall mean a Draw Request and Certificate in the form of Exhibit 7 to the Capital Maintenance Agreement.

DRP Rules means, as of the Effective Date, the administrative rules promulgated in accordance with Section 201.112(a) of the Code, adopted by TxDOT in accordance with the Texas Administrative Procedure Act and effective under Rule §9.6 of Subchapter A, Chapter 9, Part 1, Title 43 of the Texas Administrative Code on or before the Effective Date regarding dispute resolution procedures applicable to the resolution of all claims and disputes of every kind or character arising under comprehensive development agreements such as and including the CMA documents DRP Governed Agreements.

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

Element Category shall mean any of the element categories set forth and numbered 1 to 19 in Attachment 1 to Exhibit 2.

Emergency shall mean, in connection with the Maintenance Services, any unforeseen event affecting the Project, whether directly or indirectly which occurs on or originates from the Project or Project ROW and: (a) causes or has the potential to cause disruption to the free flow of traffic on the Project or a threat to the safety of the public or workers; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the environment or to Adjacent Work; or (c) is recognized by the Texas Department of Public Safety as an emergency.

Emergency Services shall mean, in connection with the Maintenance Services, law enforcement, ambulance service and other similar services from agencies with whom Maintenance Contractor establishes protocols for incident response, safety and security procedures, as set forth in the Incident Management Plan.

Environmental Approvals shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with the Project.

Environmental Laws shall mean any Law applicable to the Project or the Maintenance Services regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Maintenance Services, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- (x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*), as amended;
- (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- (xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

- (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 et seq.), as amended;
- (xix) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know-Act);
- (xx) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);
- (xxi) The Texas Water Code;
- (xxii) The Texas Parks and Wildlife Code;
- (xxiii) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);
- (xxiv) The Texas Asbestos Health Protection Act (Chapter 1954, Texas Occupations Code); and
- (xxv) The Surface Coal Mining and Reclamation Act (Chapter 134, Texas Natural Resources Act).

Equivalent Single Axle Load (ESAL) shall mean an 18,000 pound single axle load.

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

Escrowed Proposal Documents or **EPDs** shall have the meaning set forth in Section 18.1 of the Capital Maintenance Agreement.

Evaluating Party has the meaning set forth in the Disputes Board Agreement.

Event of Default shall have the meaning set forth in Section 12.3.1 of the Capital Maintenance Agreement.

Expendable Materials shall mean: (a) tangible personal property that loses its distinct and separate identity when incorporated into real property (examples include framing lumber, bricks, steel, re-bar, concrete) and (b) consumable items, defined as nondurable tangible personal property that is used to improve real property and that, after being used once for its intended purpose, is completely used or destroyed so that it has no salvage value (examples include non-reusable concrete forms, non-reusable drop cloths, barricade tape, natural gas, and electricity).

Existing Utility Property Interest shall mean any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

Final Order means the order issued by the Executive Director pursuant to Section 17.3.5.1 or 17.3.5.4 of the Capital Maintenance Agreement.

Final Order Implementing Decision has the meaning set forth in Section 17.3.5.1(b) and 17.3.5.4(a)(ii) of the Capital Maintenance Agreement.

Final Order Vacating Decision has the meaning set forth in Section 17.3.5.4(a)(i) of the Capital Maintenance Agreement.

Final Payment shall mean the last payment made under the Capital Maintenance Agreement.

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

- (a) Any earthquake, tornado, hurricane or other natural disaster that causes direct physical damage to the Project;
- (b) Any epidemic in the Dallas-Fort Worth area;
- (c) Any blockade, rebellion, war, riot, act of sabotage or civil commotion that causes direct physical damage to the Project;
- (d) Any Change in Law which (1) requires Maintenance Contractor to obtain a new major State or federal environmental approval not previously required for the Project, (2) results in an increase in Maintenance Contractor's costs directly attributable to the Change in Law of at least \$500,000, or (3) specifically targets the Project or Maintenance Contractor;

- (e) Any spill of Hazardous Material by a third party which occurs after Maintenance NTP1 and is required to be reported to a Governmental Entity, and which renders use of the roadway or construction area unsafe absent assessment, containment, and/or remediation;
- (f) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Maintenance Services, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any member of the Maintenance Contractor-Related Entities;
- (g) Total failure of a bridge such that it requires replacement, except to the extent arising out of, related to or caused by, the act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any Maintenance Contractor Related-Entity or Developer-Related Entity; and
- (h) Malicious or other acts by a third party intended to cause loss or damage or other similar occurrence, including vandalism or theft.

The term “**Force Majeure Event**” shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

- (i) any fire or other physical destruction or damage, or delays to the Project which occur by action of the elements, including lightning, explosion, drought, rain, flood, snow, storm, except as specified in clause (a) above;
- (ii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- (iii) the suspension, termination, interruption, denial or failure to obtain, nonrenewal or change in any Governmental Approval, except for any such matter falling within the scope of clause (c) or clause (e) above;
- (iv) any delay or cost risk for which coverage is to be provided through insurance required under the Capital Maintenance Agreement or by Law; and
- (v) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (g) above.

General Inspection means an inspection of Maintained Elements to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop a renewal work schedule, to maintain asset condition and service levels and to develop programs of maintenance and renewal work to minimize the effect of Maintenance Services on Users.

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

Good Industry Practice shall mean the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor or maintenance contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and engaged in the same type of undertaking under circumstances and conditions under circumstances and conditions similar to those within the same geographic area as the Project.

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

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

Guaranteed Obligations shall have the meaning set forth in the Guaranty.

Guarantor shall mean each of the entities which provided a guarantee in the form of Exhibit 9 of some or all of the obligations of Maintenance Contractor under the Capital Maintenance Agreement.

Guaranty shall mean each guarantee executed by a Guarantor guaranteeing some or all of the obligations of Maintenance Contractor under the Capital Maintenance Agreement.

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

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

“pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);

- (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (d) Any flammable substances or explosives;
- (e) Any radioactive materials;
- (f) Any asbestos or asbestos-containing materials;
- (g) Any lead and lead-based paint;
- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management shall mean procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with

respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Maintenance Services, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

Hazardous Materials Management Plan shall mean shall mean the plan prepared by Maintenance Contractor for the safe handling, storage, treatment and/or disposal of Hazardous Materials both within and outside the Project ROW, as more particularly described in Section 2200 of Exhibit 2.

Incident shall mean a localized disruption to the free flow of traffic on or safety of users of the Project.

Incident Management Plan shall mean the Maintenance Contractor's plan for detection and response to incidents or emergencies pursuant to Section 0205 of Exhibit 2.

Indemnified Parties shall mean TXDOT, the State, the Texas Transportation Commission, FHWA, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

Informal Resolution Procedures has the meaning set forth in Section 17.3.2 of the Capital Maintenance Agreement.

Initial Maintenance Commencement Date shall have the meaning set forth in Section 4.1 of the Capital Maintenance Agreement.

Initial Maintenance Term shall have the meaning set forth in Section 4.1 of the Capital Maintenance Agreement.

Key Maintenance Personnel shall mean those individuals and personnel of the Maintenance Contractor filling the role and job description of:

1. Maintenance Manager
2. Maintenance QC Manager

Lane Closure shall mean full or partial closure of any traffic lane in any portion of the Project and for any duration, including main lanes, ramps, direct connectors, frontage roads and cross roads.

Law or **Laws** shall mean (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by TxDOT within the scope of its administration of the CDA Documents)

or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Maintenance Services, whether taking effect before or after the Proposal Due Date, including Environmental Laws. "Law" or "Laws," however, exclude Governmental Approvals.

Letter of Credit shall have the meaning set forth in Section 7.2 of the Capital Maintenance Agreement.

LIBOR shall mean the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Telerate Page 3750 at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

Lien shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages for Lane Closures shall have the meaning set forth in Section 12.4 of the Capital Maintenance Agreement.

Losses shall mean any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Capital Maintenance Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Maintained Element shall mean an element set forth in Attachment 2 to the Maintenance Specification.

Maintenance Contractor shall mean _____, a _____, together with its successors and assigns.

Maintenance Contractor Default shall have the meaning set forth in Section 12.1 of the Capital Maintenance Agreement.

Maintenance Contractor-Related Entity shall mean: (a) Maintenance Contractor, (b) Maintenance Contractor's partners, joint venturers and/or members, (c) Subcontractors (including Suppliers), (d) any other Persons performing any of the Maintenance Services, (e) any other Persons for whom Maintenance Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors,

shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Maintenance Contractor Release of Hazardous Materials means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Maintenance Contractor-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Maintenance Contractor-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Maintenance Contractor-Related Entity in violation of the requirements of the CMA Documents or any applicable Law or Governmental Approval.

Maintenance Management Plan shall mean the plan prepared by Maintenance Contractor and approved by TxDOT as set forth in Section 5.5 of the Capital Maintenance Agreement.

Maintenance Manager means the Maintenance Contractor's Project manager.

Maintenance NTP1 shall mean a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Initial Maintenance Term and establishing the date of commencement of the Initial Maintenance Term.

Maintenance NTP2 shall mean a written notice issued by the TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Second Maintenance Term and establishing the date of commencement of the Second Maintenance Term.

Maintenance NTP3 shall mean a written notice issued by TxDOT to Maintenance Contractor authorizing Maintenance Contractor to proceed with the Maintenance Services for the Third Maintenance Term and establishing the date of commencement of the Third Maintenance Term.

Maintenance Payment Bond shall mean the payment bond delivered by Maintenance Contractor in the form attached to the Capital Maintenance Agreement as Exhibit 7.

Maintenance Performance Bond shall the performance bond delivered by Maintenance Contractor in the form attached to the Capital Maintenance Agreement as Exhibit 6.

Maintenance Price shall have the meaning set forth in Section 8.1.1 of the Capital Maintenance Agreement.

Maintenance QC Manager means the Maintenance Contractor's quality control manager who is responsible to independently oversee and perform quality control for the Maintenance Services in accordance with the Maintenance QCP.

Maintenance QCP shall have the meaning set forth in Section 5.6 of the Capital Maintenance Agreement.

Maintenance Records shall mean all data in connection with maintenance of the Project including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from TxDOT, the Independent Engineer or other third party, and (c) any information system (as may be introduced or amended by TxDOT from time to time) in connection with maintenance of the Project that TxDOT requires Developer to use or operate.

Maintenance Services shall mean all of the services and obligations required to be performed by Maintenance Contractor under the CMA Documents, including all required maintenance, repairs, rehabilitation and replacements of the Maintained Elements.

Maintenance Specification shall mean Exhibit 2 of the Capital Maintenance Agreement

Maintenance Term shall mean the Initial Maintenance Term, Second Maintenance Term or Third Maintenance Term, as appropriate.

Maintenance Transition shall mean the terms, conditions, requirements and procedures governing the conditions in which Maintenance Contractor is to deliver the Project upon expiration or termination of the Capital Maintenance Agreement, as set forth in Section 0208 of Exhibit 2.

Maintenance Transition Plan shall have the meaning set forth in Section 3.6 of the Capital Maintenance Agreement.

Major Subcontract shall mean a Subcontract in excess of \$250,000.

Major Subcontractor shall mean a Subcontractor whose contract with the Maintenance Contractor is in excess of \$250,000.

Misconduct means, with respect to any individual who is a Disputes Board Member, any one or more of the following:

(a) Any ex parte communication or discussion between any Disputes Board Member and either Party (or a member of the Conflicts Group on behalf of either Party) or other ex parte communication prohibited under R-10 of the Commercial Rules;

(b) Any offer, solicitation, discussion, agreement or understanding between any Disputes Board Member and any Party or any other Person regarding (i) remuneration conditioned upon the nature or result of a certain Disputes Board Decision or (ii) employment of the Disputes Board Member by any member of the Conflicts Group following termination of such member's services on the Disputes Board, except for employment as a member of a subsequent Disputes Board or similar disputes board for a project other than the Facility;

(c) The rendition of advice or consultative services to either Party or member of the Conflicts Group; or

(d) A material lack of the requisite experience under Section 4.1 of the Disputes Board Agreement that was not and could not reasonably have been discovered by the Nominating Party or the Evaluating Party at the time such individual was proposed and approved for inclusion on the Nominating Party's Disputes Board Member Candidates' List, including, by way of example and not limitation, a situation where such individual has materially misrepresented his or her experience to the Parties.

Nominating Party has the meaning set forth in the Disputes Board Agreement.

Nonconforming Work shall mean Maintenance Services that do not conform to the requirements of the CMA Documents, the Governmental Approvals or applicable Law.

Non-maintained Element shall mean an element not set forth in Attachment 2 to the Maintenance Specification.

Notice of Partial Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating part of the Maintenance Services of Maintenance Contractor for convenience under Section 15.1 of the Capital Maintenance Agreement.

Notice of Termination for Convenience shall mean written notice issued by TxDOT to Developer terminating the Maintenance Services of Maintenance Contractor for convenience under Section 15.1 of the Capital Maintenance Agreement.

Off Peak Times shall mean all times not defined as Peak Times.

Open Book Basis shall mean providing TxDOT all underlying assumptions and data associated with pricing or compensation (whether of Maintenance Contractor or TxDOT) or adjustments thereto, including assumptions as to costs of the Maintenance Services, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the amount.

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

PCO Notice shall have the meaning set forth in Section 10.3.2.3 of the Capital Maintenance Agreement.

Peak Times shall have the meaning set forth in Attachment 6 to Exhibit 2 of the Capital Maintenance Agreement.

Performance Requirement shall mean, for each Maintained Element in connection with the Maintenance Services, the requirements set forth in the Performance and

Measurement Table Baseline in the column headed "Performance Requirement" in Attachment 1 to Exhibit 2.

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

Pre-existing Hazardous Materials shall mean Hazardous Materials that meet both of the following criteria:

- (a) The Hazardous Materials are in, on or under the Project ROW (excluding Developer-Designated ROW) as of the Proposal Due Date; and
- (b) The Hazardous Materials are not the result of a Release of Hazardous Materials by any Maintenance Contractor-Related Entity.

Project shall have the meaning set forth in Recital B to the Capital Maintenance Agreement.

Project ROW shall mean the Schematic ROW and the Additional Properties, but excluding therefrom any portion of the Schematic ROW eliminated from the Project by a Change Order under the Comprehensive Development Agreement.

Project Schedule shall have the meaning set forth in Section 0202 of Exhibit 2.

Proposal shall mean Developer's response to the RFP.

Proposal Due Date shall mean July 15, 2008, the deadline for submission of the Proposal to TxDOT.

Protection in Place shall mean any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Recognized Environmental Condition shall have the meaning set forth in ASTM E-1527-00.

Reference Information Documents shall mean those documents listed in Exhibit 1 to the Capital Maintenance Agreement. Except as expressly provided in the CMA Documents, the Reference Information Documents are not considered CMA Documents and were provided to Maintenance Contractor for informational purposes only and without representation or warranty by TxDOT.

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

Reimbursable Hazardous Materials Costs shall mean Maintenance Contractor's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 10.8.2 of the Capital Maintenance Agreement, provided that the 25% and 145% mark-ups allowed under Section 10.7.1 shall be reduced to 12.5% and 130%, and the 15% mark-up allowed under Section 10.7.2 shall be reduced to 7.5%.

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

Replacement Utility Property Interest shall mean any permanent right, title or interest in real property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Request for Change Proposal shall mean a written notice issued by TxDOT to Maintenance Contractor under Section 10.2.1 of the Capital Maintenance Agreement, advising Maintenance Contractor that TxDOT may issue a TxDOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant to Section 10.2.1 of the Capital Maintenance Agreement.

Request for Partnering shall have the meaning set forth in Section 10.3.2.2 of the Capital Maintenance Agreement.

Request for Proposals (RFP) shall mean the Request for Proposals issued by TxDOT on March 28, 2008 with respect to the Project, including all exhibits, forms, and attachments thereto and any subsequent addenda.

RFP Documents shall mean all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFP Documents, including Instructions to Proposers, the CDA Documents, the CMA Documents and the Reference Information Documents and any addenda issued in connection therewith.

Right of Entry Agreement shall mean a written agreement between the record title owner and Developer granting TxDOT, Developer, Maintenance Contractor or assignees permission to enter the applicable parcel.

ROW Strip Map shall mean the diagrams depicting the Schematic ROW, which are provided in the Reference Information Documents.

Rules shall mean Sections 27.1-27.9 of Title 43, Texas Administrative Code.

Scheduled Substantial Completion Deadline shall mean the scheduled date of Substantial Completion established by Developer's notice to TxDOT pursuant to Section 20.1.4 of the Comprehensive Development Agreement.

Schematic Design shall mean the roadway schematic contained in the Reference Information Documents of CDA Documents.

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

Second Maintenance Term shall have the meaning set forth in Section 4.2.1 of the Capital Maintenance Agreement.

Service Line shall mean: (a) a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system, or (b) any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a local agency's lighting and electrical systems, traffic control systems, communications systems and/or irrigation systems.

Site shall mean Schematic ROW, Additional Properties, Replacement Utility Property Interests, and any temporary rights or interests that Developer may acquire at its own cost and expense in connection with the Project.

Specialist Inspection means an inspection requiring specialist qualifications or equipment as specified in Section 1909 of the Maintenance Specification.

State shall mean the State of Texas.

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

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

Subcontractor Dispute shall have the meaning set forth in Section 17.4 of the Capital Maintenance Agreement.

Substantial Completion shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.1.2 of the Comprehensive Development Agreement, as and when confirmed by TxDOT's issuance of a certificate in accordance with Section 20.1.5 of the Comprehensive Development Agreement.

Supplier shall mean any Person not performing work at or on the Project ROW which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Maintenance Contractor or to any Subcontractor in connection with the performance of the Maintenance Services. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Project ROW shall not be deemed to be performing Maintenance Services at the Project ROW.

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

Systems Integrator shall mean the contractor, under separate contract to TxDOT, that shall design, supply, install, test and commission the ETCS for the Project, including scanners, readers, loops, enforcement mechanisms and manual and automated cash collection systems.

Tangible Net Worth shall mean the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

Target shall mean the target value for the measurement record set forth in the column headed "Target" in the Performance and Measurement Table, Attachment 1 to Exhibit 2.

Termination for Convenience shall mean a termination pursuant to Section 15.1 of the Capital Maintenance Agreement.

Third Maintenance Term shall have the meaning set forth in Section 4.3.1 of the Capital Maintenance Agreement.

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

Threatened or Endangered Species shall mean any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

Time and Materials Change Order shall mean a Change Order issued in accordance with Section 10.7 of the Capital Maintenance Agreement.

Traffic Management Plan shall mean the plan prepared by Maintenance Contractor for the management of traffic as described in Section 1802 of Exhibit 2.

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

TxDOT-Directed Changes shall mean any changes in the scope of the Maintenance Services or terms and conditions of the Maintenance Agreement Documents (including changes in the standards applicable to the Maintenance Services), which TxDOT has directed Developer to perform as described in Section 10.2 of the Capital Maintenance Agreement.

TxDOT's Recoverable Costs means:

- (a) The costs of any assistance, action, activity or Maintenance Services undertaken by TxDOT which Maintenance Contractor is liable for or is to reimburse under the terms of the CMA Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of TxDOT staff and employees performing such action, activity or Maintenance Services; plus
- (b) Third-party costs TxDOT incurs to publicly procure any such third party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of TxDOT's Office of General Counsel or the Texas Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Maintenance Services, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the CMA Documents and continuing until paid.

Unplanned Capital Maintenance shall mean Work consisting of replacement or reconstruction of an asset that, at the Effective Date the Developer does not anticipate carrying out during the term of the CMA.

Useful Life shall mean, for a Maintained Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Maintained Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

User(s) means the registered owner of a vehicle traveling on the Project or any portion thereof.

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

Utility Adjustment shall mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "**Utility Adjustment**" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Joint Use Acknowledgements, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Owners. The term also includes any reimbursement of Utility Owners which is Developer's responsibility pursuant to Section 6.8 of the Comprehensive Development Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Owner shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Warranty(ies) shall have the meaning set forth in Section 9.1 of the Capital Maintenance Agreement.

Warranty Period shall have the meaning set forth in Section 9.2.1 of the Capital Maintenance Agreement.

Attachment 8

EXHIBIT 15

DISPUTES BOARD AGREEMENT

THIS DISPUTES BOARD AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2008, (the "Effective Date") by and between the Texas Department of Transportation ("TxDOT"), and _____ ("Maintenance Contractor"). TxDOT and Maintenance Contractor are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Comprehensive Development Agreement, for the DFW Connector Project, dated as of the Effective Date (the "CDA") and the other CMA documents, all of which collectively comprise a comprehensive development agreement under Chapter 223 of the Code. On the same date, TxDOT and Maintenance Contractor executed a Capital Maintenance Agreement (CMA").

B. Section 17.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "Disputes Board") to resolve each Dispute if, as and when, a Dispute arises under the CMA documents.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the CMA documents, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CMA Documents.

1.2 Reference Section of CMA. Section 17.3 of the CMA, which, among other things, discusses the Disputes Board's role in resolving Disputes, is incorporated herein by reference.

1.3 Section References. Unless expressly indicated otherwise, all references in this Agreement to a "Section" mean the Section contained in this Agreement.

Section 2. Purpose and Role of the Disputes Board; Binding Disputes Board Decision.

The sole purpose of the Disputes Board is to fairly and impartially consider all Disputes brought to it and to resolve such Disputes in a Disputes Board Decision (as

defined in Section 5.5 below). The Disputes Board is not a supervisory, advisory, or facilitating body and has no role other than as expressly described in this Agreement and in Section 17.3 of the CMA. Notwithstanding that each Disputes Board Member will have been engaged by a Party under a Disputes Board Member Joinder Agreement (as defined in Section 3.1.2 below), none of the Disputes Board Members shall consider themselves an appointee, representative, agent or advocate of the Party who engaged him or her. Disputes Board Members are charged with discharging their responsibilities hereunder in an impartial, objective, independent and professional manner without regard to the particular interests of either Party. Upon completion of the remainder of procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

Section 3. Selection, Replacement and Removal of Disputes Board Members and Candidates.

3.1 Selection of Disputes Board Member Candidates and Disputes Board Members.

3.1.1 At all times, each Party shall endeavor to maintain a list of five candidates who satisfy the Disputes Board Member Qualifications (as defined in Section 4 below) and have been approved or deemed approved by the other Party to serve on the Disputes Board (each such list being a “Disputes Board Member Candidates List”). As of the Effective Date, (a) TxDOT accepts and consents to the final Disputes Board Member Candidates List of Maintenance Contractor previously approved or deemed approved by TxDOT on or before the Effective Date and (b) Maintenance Contractor accepts and consents to the Disputes Board Member Candidates List of TxDOT previously approved or deemed approved by Maintenance Contractor on or before the Effective Date.

3.1.2 If at any time, pursuant to Section 17.3.4.2 of the CMA, a Dispute is referred by TxDOT or Maintenance Contractor to the Disputes Board for resolution, each Party shall, within 15 days after notice of such referral is given or received (or within 7 days after notice of a Fast-Track Dispute is given or received), appoint and engage one of the preapproved candidates on its Disputes Board Member Candidates List to serve on the Disputes Board. The Disputes Board empanelled to resolve each Dispute shall consist of three individuals, except as otherwise provided for resolution of Small Claims under Section 5.3.3 or as the Parties may agree pursuant to Section 3.1.4 below, which shall consist of (a) one Disputes Board Member selected by TxDOT, (b) one Disputes Board Member selected by Maintenance Contractor and (c) a third individual selected pursuant to Section 3.1.3 below. To set forth the terms and conditions of such appointment and engagement, each Party and its appointed Disputes Board Member shall enter into a Disputes Board Member Joinder Agreement in the form attached hereto as Attachment 1 (each such agreement, upon execution, being referred to herein as a “Disputes Board Member Joinder Agreement” and incorporated herein by reference).

3.1.3 The two Disputes Board Members appointed to the Disputes Board shall, as their first duty following appointment shall, within 15 days after their appointment (or within 7 days after their appointment, if the Dispute for resolution by the Disputes Board is a Fast-Track Dispute), select the third Disputes Board Member (the “Disputes Board Chair”) from among the remaining candidates that appear on the Parties’ Disputes Board Member Candidate Lists. If the two Disputes Board Members appointed by Maintenance Contractor and TxDOT are unable to reach agreement on their selection of the Disputes Board Chair within such time period, then either Maintenance Contractor or TxDOT or both shall request that the Chief Administrative Judge of the Travis County District Courts select the Disputes Board Chair from among the remaining candidates that appear on the Parties’ Disputes Board Member Candidate Lists. Both Parties waive all rights to appeal the decision of the Chief Administrative Judge, except if the individual designated by such judge to serve as the Disputes Board Chair is not among the qualified and approved candidates remaining on the Parties’ Disputes Board Member Candidate Lists. Within 15 days after the selection of the Disputes Board Chair by the two appointed Disputes Board Members or the Chief Administrative Judge (or within 7 days after such selection if the Dispute is a Fast-Track Dispute), the Party on whose list the Disputes Board Chair appears and the individual selected to serve as the Disputes Board Chair on the Disputes Board shall enter into a Disputes Board Member Joinder Agreement.

3.1.4 The Parties may mutually agree at any time prior to the Dispute Board’s issuance of a Disputes Board Decision that the relevant Dispute shall be resolved by the Disputes Board Chair alone rather than by the three member Disputes Board, and any such agreement shall be irrevocable upon issuance of the joint written directive next described. If the Parties so agree, they shall issue a joint written directive to the Disputes Board (or to the two appointed Disputes Board Members or the Chief Administrative Judge of the Travis County District Courts, if such Disputes Board Members or Chief Administrative Judge are or is then in the process of selecting the Disputes Board Chair pursuant to Section 3.1.3 above) stating their mutual agreement that the Disputes Board Chair alone shall resolve the relevant Dispute. If the Parties issue such a joint written directive, the Disputes Board Chair rather than the Disputes Board shall resolve the relevant Dispute in accordance with the terms and conditions of this Agreement (except insofar as this Agreement contemplates resolution of a Dispute by a three member Disputes Board) and, if the three member Disputes Board had been previously empanelled, the two Party-appointed Disputes Board Members shall be dismissed from any further service on the Disputes Board.

3.2 Replacing Candidates on a Party’s Disputes Board Member Candidates List.

3.2.1 At any time, either Party may replace any of the individuals on its Disputes Board Member Candidates List that are not then serving on the Disputes Board, provided, however, that no such individual shall be added to the Disputes Board Member Candidates List of the proposing Party (the “Nominating Party”) until complete Disclosure Statements on such individual are furnished to the other Party (the “Evaluating Party”) and the Evaluating Party approves or is deemed to approve such

individual for inclusion on the Nominating Party's Disputes Board Member Candidates List. "Disclosure Statements" shall consist of the proposed Disputes Board Member candidate's resume of experience and a discussion of the Disputes Board Member Qualifications as they apply to the proposed candidate. Within 30 days after receipt of a proposed candidate's Disclosure Statements by the Evaluating Party (the "Disputes Board Member Candidate Evaluation Period"), the Evaluating Party shall evaluate the proposed candidate's Disclosure Statements and notify the Nominating Party as to whether the candidate is approved by the Evaluating Party for inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.2 During the Disputes Board Member Candidate Evaluation Period, the Evaluating Party (a) shall submit written inquiry to the Nominating Party if, in the Evaluating Party's reasonable judgment, the Disclosure Statements for the proposed candidate are incomplete such that, if they are not supplemented to the Evaluating Party's reasonable satisfaction, such incompleteness will comprise a basis for the Evaluating Party's disapproval of the proposed candidate and (b) may submit written inquiries to the Nominating Party if the Evaluating Party has questions or concerns about the proposed candidate's qualifications to serve on the Disputes Board in light of the Disputes Board Member Qualifications. Within fifteen days after the Nominating Party's receipt of any such written inquiry from the Evaluating Party, the Nominating Party shall (or shall cause the proposed candidate to) furnish a written response to the Evaluating Party's inquiry. The Evaluating Party may submit up to three such written inquiries. The Disputes Board Member Candidate Evaluation Period shall be extended a total of 30 days (including the 15 day inquiry response period) for each written inquiry made by the Evaluating Party. The submission of incomplete Disclosure Statements (following written inquiry from the Evaluating Party so that the Nominating Party has the opportunity to supplement any such incomplete Disclosure Statements) or failure by the Nominating Party or its proposed candidate to fully respond to the Evaluating Party's written inquiry shall constitute a basis for the Evaluating Party to disapprove the proposed candidate during the Disputes Board Member Candidate Evaluation Period. If the Evaluating Party notifies the Nominating Party of its approval, or does not notify the Nominating Party of its disapproval, of a proposed candidate within the Disputes Board Member Candidate Evaluation Period, such candidate shall be approved or deemed approved by the Evaluating Party.

3.2.3 During the course of the Nominating Party replacing five consecutive potential candidates on its Disputes Board Member Candidates List on a cumulative basis over time, the Evaluating Party may, upon notice to the Nominating Party, disapprove up to two proposed candidates for any or no reason. The Evaluating Party may, upon notice to the Nominating Party, only disapprove all subsequently proposed candidates of the Nominating Party based on any such candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be described in detail in the Evaluating Party's notice of disapproval).

3.2.4 In furtherance of the Parties' objective of having in place at all times two Disputes Board Member Candidate Lists comprised of five nominated and approved candidates meeting the Disputes Board Qualifications, but subject to the provisions of

Section 3.2.3, if the Evaluating Party does not approve a proposed candidate for inclusion on the Nominating Party's Disputes Board Member Candidates List, the Nominating Party shall propose subsequent candidates in reasonably rapid succession, and the selection process shall continue until the Evaluating Party's approval is obtained or deemed obtained as to a proposed candidate's inclusion on the Nominating Party's Disputes Board Member Candidates List.

3.2.5 If the Evaluating Party disapproves a proposed candidate of the Nominating Party due to failure of such candidate to satisfy the Disputes Board Member Qualifications, but the Nominating Party disagrees that such candidate is not qualified or eligible for service, the Nominating Party may initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the Nominating Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute.

3.3 Removal of Disputes Board Member; Appointment of Replacement.

3.3.1 The appointment of a Disputes Board Member (including the Disputes Board Chair) to the Disputes Board may be terminated at any time by any of the Persons specified below in this Section 3.3.1 due to the occurrence of Misconduct or due to Conflict of Interest not previously waived under Section 4.3.1 (such termination constituting a termination "For Cause" hereunder), effective upon service of such Person's notice of termination on the affected Disputes Board Member and, if the terminating Person is a Party, the other Party or, if the terminating Person is not a Party, the Parties. Following termination and removal of a Disputes Board Member For Cause or the death or resignation of a Disputes Board Member, the Disputes Board shall not proceed with the resolution of the applicable Dispute until a replacement Disputes Board Member has been appointed.

(a) Any two members of the Disputes Board may terminate the third Disputes Board Member's appointment For Cause;

(b) TxDOT and Maintenance Contractor may, upon mutual agreement, terminate any Disputes Board Member's appointment For Cause or without cause; and

(c) TxDOT or Maintenance Contractor may unilaterally terminate the appointment of any Disputes Board Member For Cause.

Provided, however, that if a Disputes Board Member's appointment is terminated For Cause and a Party disagrees that such Disputes Board Member should have been terminated For Cause, such Party may, within 5 Business Days after notice of the Disputes Board Member's termination of appointment is received, initiate Informal Resolution Procedures and then, if such disagreement is not resolved to the disagreeing Party's satisfaction, Dispute Resolution Procedures in order to resolve such Dispute. A Party may not unilaterally or by mutual agreement with the other Party terminate the appointment of any Disputes Board member For Cause and then dispute the propriety of such termination.

3.3.2 In the event that one or more Disputes Board Members needs to be replaced due to removal, death or resignation of one or more Disputes Board Members, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

Section 4. Qualifications and Conduct of Disputes Board Members.

“Disputes Board Member Qualifications,” as they pertain to each Disputes Board Member or proposed candidate for inclusion on a Party’s Disputes Board Member Candidate List, consist of the requisite experience described in Section 4.1 below and the absence of grounds for disqualification as described in Section 4.2 below.

4.1 Requisite Experience. All Disputes Board Members shall be attorneys who (a) are retired judges with at least ten years prior experience as a sitting judge or (b) are active members of the State Bar of Texas or any other state bar with at least ten years prior experience acting as mediators, arbitrators or dispute board members for commercial disputes, in either case who have not been subject to disciplinary action within the past ten years. Preference shall be given to attorneys who, in addition to meeting the foregoing qualifications, are also experienced in interpreting or adjudicating contract rights and claims involving financing, design, construction, operations and/or maintenance of public infrastructure projects.

4.2 Disqualification. No Disputes Board Member shall have a financial interest in the Facility Agreement, in any Contract or the Facility or in the outcome of any Dispute decided hereunder, except for payments to that member for services on the Disputes Board.

4.3 Effect of Party’s Prior Approval of Disputes Board Member.

4.3.1 An Evaluating Party’s approval or deemed approval of a proposed candidate for inclusion on the Nominating Party’s Disputes Board Member Candidates List shall constitute an irrevocable waiver of any subsequent objection to such individual’s lack of qualifications under Section 4.1 (except if such individual’s lack of qualifications constitutes Misconduct, as addressed in Section 4.3.2 below).

4.3.2 No approval or deemed approval by the Evaluating Party of a proposed candidate for inclusion on the Nominating Party’s Disputes Board Member Candidates List shall constitute a waiver of any objection to a Conflict of Interest or Misconduct of such individual under Section 4.2, except that any matter fully disclosed in an individual’s Disclosure Statements prior to inclusion of such individual on the Nominating Party’s Disputes Board Member Candidates List with the approval or deemed approval of the Evaluating Party may not be subsequently asserted by the Evaluating Party as a Conflict of Interest or Misconduct constituting grounds for

termination and removal of such individual from the Nominating Party's Disputes Board Member Candidates List or from service as a Disputes Board Member on the Disputes Board.

Section 5. Procedures and Scope of Work of the Disputes Board.

5.1 Procedures; Modification of Procedures. The Disputes Board shall conduct its proceedings to resolve a Dispute in accordance with the requirements specified or referenced herein; provided, however, that:

(a) The Parties may jointly modify the procedures applicable to the Disputes Board's proceedings to resolve a Dispute, effective upon the Disputes Board Chair's receipt of the Parties' written notice of the Parties' mutually agreed modification of such procedures describing such modification in detail (the foregoing being without limitation to any requirements applicable to the Parties' amendment of the CMA or any requirements applicable to modification of the DRP Rules or the Sections of the Code under which the DRP Rules are promulgated); and

(b) The Disputes Board may modify the procedures applicable to its proceedings to resolve a Dispute so as to be more responsive to the needs of the Parties, provided that (i) the Disputes Board Chair issues written notice to the Parties describing the proposed modification in detail and (ii) both Parties give their written consent thereto, effective upon the Disputes Board Chair's receipt of the Parties' written consent thereto.

5.2 Ineligible Matters. As a preliminary matter prior to consideration of the underlying matter, the Disputes Board shall hear, consider and render a Disputes Board Decision with respect to the responding Party's assertion that a particular claim, demand, dispute, disagreement or controversy is an Ineligible Matter. Resolution of whether a claim, demand, dispute, disagreement or controversy is a Dispute that the Disputes Board has authority to resolve or an Ineligible Matter shall be resolved as a preliminary matter by the Disputes Board, and the Disputes Board Decision shall reflect that the underlying matter is a Dispute eligible for resolution by the Disputes Board unless a majority of the Disputes Board determines with positive assurance that such a determination would not be correct.

5.3 Procedures for Disputes Board's Resolution of Disputes.

5.3.1 The Disputes Board shall conduct its proceedings in accordance with the Commercial Rules, including time periods in which actions by the Disputes Board shall occur. "Commercial Rules" means the dispute resolution proceedings set forth in Attachment 2 attached hereto. For Fast-Track Disputes, the time frames provided in the Commercial Rules for Expedited Procedures (as defined in Attachment 2) shall apply in accordance with the Commercial Rules.

5.3.2 Each Disputes Board Member, or the Disputes Board Chair on behalf of the Disputes Board, shall promptly notify the Parties if any circumstances has

or is likely to arise that would prevent prompt resolution of the applicable Dispute in accordance with the Commercial Rules and this Agreement.

5.3.3 The following provisions pertain to Small Claims:

(a) A “Small Claim” is a Claim or related or similar Claims which arise fairly contemporaneously out of the same set of acts, events or circumstances that the Parties mutually agree to have resolved solely by the Disputes Board Chair. A non-binding example of a Small Claim is where the cumulative amount in controversy of a Claim or related or similar Claims is \$100,000 or less.

(b) Once the Disputes Board Chair is appointed to resolve a Small Claim, the other two Disputes Board Member shall be released from further service. Thereafter, in the context of the Disputes Board Chair’s resolution of a Small Claim hereunder, all references in the dispute resolution procedures established in Section 17.3 of the CMA to the “Disputes Board” or the “Disputes Board Members” shall mean and refer to the Disputes Board Chair. At any time prior to the close of the Disputes Board hearing under R-27 of the Commercial Rules, if, due to amendment of the Dispute as to the amount in controversy, aggregation of the Dispute with other Disputes or other changes that cause a Party to no longer consent to resolution of the Dispute as a Small Claim by the Dispute Board Chair, such Party may, upon notice to the Disputes Board Chair and the other Party, withdraw its assent to resolution of the Dispute as a Small Claim by the Disputes Board Chair and require that a full three-member Disputes Board be empanelled to resolve such Dispute.

(c) The Disputes Board Chair shall have no authority to award compensation or damages in a Disputes Board Decision regarding a Small Claim aggregating more than \$100,000, and TxDOT or Maintenance Contractor as the claiming Party, as the case may be, asserting a Small Claim hereby irrevocably waives any right, at law or in equity, to any damages or award arising out of such Small Claim in excess of \$100,000; provided, however, that the amount of \$100,000 as stated in this Section 5.3.3(c) shall be adjusted on every fifth anniversary of the Effective Date by the percentage increase (if any) in the CPI between the date the CPI was most recently published before the Effective Date and the date most recently published before the date of adjustment.

5.4 Aggregation of Disputes. Either Party shall be entitled to request the Disputes Board to aggregate the consideration of multiple Disputes for resolution by the Disputes Board where common questions of fact, Law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the aggregate consideration of all such Disputes. Upon receipt of such a request, the Disputes Board shall consider the aggregated Disputes in a single proceeding unless, as a preliminary matter, the Disputes Board determines (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed aggregation of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, Law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a

single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the proposed aggregated Disputes (as specified in the Disputes Board Decision on this matter) by a separately empanelled Disputes Board in a separate proceeding. A Disputes Board Decision regarding whether Disputes will be aggregated for resolution in a single proceeding before the Disputes Board shall be final, binding and not subject to appeal.

5.5 Issuance of Disputes Board Decision and Any Minority Report. The Disputes Board should make every effort to reach a unanimous decision among the Disputes Board Members. If this proves infeasible, the dissenting Disputes Board Member may prepare a minority report. Within 20 days after the final hearing on an Dispute (other than a Fast-Track Dispute, in which case within 5 days after the final hearing the Fast-Track Dispute), the Disputes Board Chair shall issue the Dispute Board's written decision (each, a "**Disputes Board Decision**"), together with its written findings of fact and conclusions of law in support of the Disputes Board Decision, to the Parties.

5.6 Confidential Materials; Return or Destruction Thereof. "**Confidential Materials**" are all discussions, negotiations, testimony and evidence between the Parties and/or in a proceedings before the Disputes Board that are confidential pursuant to Section 17.3.10 of the CMA. Each Disputes Board Member shall maintain the privacy of Confidential Information pursuant to Section 17.3.10 of the CMA. Within 30 days after issuance of the Final Order Implementing Decision, the Disputes Board Chair shall furnish written notice to each Party listing the Confidential Materials in the Disputes Board's possession and, except for those Confidential Materials that a Party directs the Disputes Board to return to such Party in writing within 15 days after receipt of such notice, the Disputes Board Chair shall destroy all copies of all Confidential Materials in the Disputes Board's possession. Until the time for the Disputes Board Chair's issuance of the foregoing written notice, the Disputes Board shall hold all Confidential Materials in confidence other than making them available for production into evidence in subsequent proceedings.

5.7 Dissolution of Disputes Board. Once the Disputes Board Decision of the Disputes Board becomes final and the Executive Director has issued a Final Order Implementing Decision, the Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service.

Section 6. Necessity of Submission of Dispute to Disputes Board.

A Party's submission of a Dispute to the Disputes Board for resolution and the Dispute Board's issuance of the Disputes Board Decision shall be conditions precedent to any subsequent proceeding concerning such Dispute, except as otherwise provided in Section 17.3 of the CMA.

Section 7. TxDOT and Maintenance Contractor Responsibilities.

7.1 TxDOT Responsibilities. TxDOT shall serve upon each Disputes Board Member one copy of the CMA documents. TxDOT shall also serve upon each Disputes Board Member (and concurrently upon Maintenance Contractor) any other documents which are or may become pertinent to the activities of the Disputes Board, including but not limited to any Change Order, Directive Letter or other written direction, instruction, determination or decision of TxDOT.

7.2 Maintenance Contractor Responsibilities. Maintenance Contractor shall serve on each Disputes Board Member (and concurrently on TxDOT) one set of any documents which are or may become pertinent to the activities of the Disputes Board, except those documents furnished by TxDOT. Such documents may include, but shall not be limited to, any drawings or sketches, calculations, procedures, schedules, estimates or other documents and Submittals which are used in the performance of the Work or in justifying or substantiating Maintenance Contractor's position.

7.3 Parties' Responsibilities for Costs and Expenses; Cooperation.

7.3.1 Each Party shall be responsible and make payment for its one-half share of all facilities fees, support services costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. A Party that disputes an invoice for any such cost or expense relating to the Disputes Board's proceedings shall notify the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time require for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

7.3.2 Each Party shall diligently cooperate with the Disputes Board and the other Party and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure was egregious, the Disputes Board shall take into account such egregious failure to cooperate in its determination of the Disputes Board Decision; subject, however, to the limitations on the Disputes Board's authority set forth in Section 17.3.4.1 of the CMA.

Section 8. Term.

Consistent with the DRP Rules, the term of this Agreement shall commence on the Effective Date and continue in full force and effect for the Term of the CMA and thereafter for so long as either Party has any obligation originating under the CMA documents until the applicable statute of limitations on any Dispute in regard to such obligation has expired.

Section 9. Payment of Disputes Board Members' Fees, Costs and Expenses.

9.1 Payment for Services. Payment of fees for work performed and services rendered by each Disputes Board Member and for his or her direct out-of-pocket costs and expenses shall be calculated in accordance with the payment terms set forth for such Disputes Board Member in his or her respective Disputes Board Member Joinder Agreement. The personal services of the Disputes Board Member are a condition to receiving payments hereunder. Such payments shall be full compensation for work performed and services rendered by each respective Disputes Board Member, and for all labor, materials, supplies, equipment and incidentals necessary for such Disputes Board Member's participation in the operation of the Disputes Board.

9.2 Disputes Board Member Invoices. Each Disputes Board Member shall submit invoices on a monthly basis concurrently to TxDOT and Maintenance Contractor for payment for such Disputes Board Member's work performed and services rendered in the prior month. Such invoices shall be in a format approved by TxDOT and Maintenance Contractor, accompanied by an itemization of days and hours billed along with a description of activities performed during each day in that billing period, and an itemization of direct non-salary costs incurred supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data. The amount to be paid shall be established from the applicable billing rate set forth in each Disputes Board Member's Disputes Board Member Joinder Agreement plus costs and expenses in accordance with such agreement.

9.3 Payment by Parties. Each Party shall be responsible and make payment for its one-half share of all fees, costs and expenses of the Disputes Board Members' service on the Disputes Board. Each Disputes Board Member will be paid within 30 days of the Parties' receipt and acceptance of invoices therefor. A Party that disputes a Disputes Board Member's invoice shall notify such member and the other Party of such dispute promptly after receipt of such invoice. If either Party fails to pay its share of the amount owing to any Disputes Board Member at the time required for payment, then, unless the non-paying Party is disputing the amount due, (a) the other Party may make payment in lieu of the non-paying Party and (b) the paying Party will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by Law, no matter which Party is the prevailing Party.

9.4 Retention of Cost Records and Accounts. Disputes Board Members shall keep available for inspection by representatives of TxDOT and Maintenance Contractor, for a period of five years after the final payment, the cost records and accounts pertaining to this Agreement and the performance of work and rendition of services as a member of the Disputes Board. If any claim arising out of, in connection with, or related to this Agreement is initiated before the expiration of the five year period, the cost records and accounts shall be retained until such claim involving the records is completed.

9.5 Parties to Bear Own Costs. Each Party shall bear its own costs arising out of or in connection with the Dispute Resolution Procedures.

9.6 Diligent Cooperation. The Parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of Disputes submitted to the Disputes Board. If either Party refuses to diligently cooperate, and the other Party, after first giving notice setting forth the Party's basis for its contention of non-cooperation and requesting specific action, incurs additional costs or attorneys', accountants' and expert witness fees solely as a result of such failure to diligently cooperate, then the Disputes Board may award such additional costs and, accountants' and expert witness fees to the Party giving such notice, even if such Party is not the prevailing Party in the Dispute. The Party so entitled to such award shall have the right to pursue and enforce it in any subsequent proceedings.

Section 10. Nonassignability.

Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

Section 11. Legal Relations.

11.1 Disputes Board Member as Independent Contractor. The Parties mutually understand and agree that any Disputes Board Member, in the performance of duties as a Disputes Board Member on the Disputes Board, is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. No Disputes Board Member will be entitled to any employee benefits from either Party.

11.2 No Effect on Potential Liabilities Under the CMA documents or by Law. Except for the payment, offset and reimbursement obligations agreed to by the Parties as set forth herein, nothing in this Agreement alters the potential liabilities of either Party as provided under the CMA documents and, subject to the terms and conditions of the CMA documents, by Law.

11.3 Damages Waiver. Neither TxDOT nor Maintenance Contractor will hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as a result of fraud, willful misconduct or criminal actions of the applicable Disputes Board Member.

Section 12. Applicable Law.

The Disputes for resolution by the Disputes Board shall be governed by and resolved under the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

Section 13. Amendment in Writing.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

Section 14. Complementary Provisions; Order of Priority.

The Parties intend for the procedures established in Section 17.3.4 of the CMA and any other relevant provisions of the CMA documents, and the terms and conditions of this Agreement (except where this Agreement says they shall not apply), to be complementary. In the event of any conflict between this Agreement and Section 17.3 of the CMA or any other relevant provision of the CMA documents, the CMA or other DRP Governed Agreement shall control.

Section 15. Notices.

Notices hereunder shall be sent as provided in Section 19.11 of the CMA. The address for each Disputes Board Member shall be set forth on the signature page of each Disputes Board Member Joinder Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

Maintenance Contractor:

[Company Name]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

TxDOT:

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____

Amadeo Saenz, P.E.

Executive Director

ATTACHMENT 1 TO DISPUTES BOARD AGREEMENT

DISPUTES BOARD MEMBER JOINDER AGREEMENT

This DISPUTES BOARD MEMBER JOINDER AGREEMENT (this "**Agreement**") is entered into this _____ day of _____, _____ by and between _____ [Specify TxDOT or Maintenance Contractor] (the "**Appointing Party**"), and _____, an individual (the "**Disputes Board Member**").

RECITALS

A. TxDOT and Maintenance Contractor are parties to that certain Capital Maintenance Agreement, for the DFW Connector Project, dated as of the Effective Date (the "**CMA**").

B. Section 17.3 of the CMA, among other things, provides for the establishment and operation of a disputes review board (each such board being referred to herein as the "**Disputes Board**") to resolve each Dispute if, as and when, a Dispute arises under the CMA documents.

C. The Appointing Party desires to appoint the Disputes Board Member to the Disputes Board to resolve such a dispute and the Disputes Board Member desires to accept such appointment, each on the terms and conditions set forth in CMA Section 17.3, the Disputes Board Agreement and this Agreement, and for that purpose, the parties hereto have agreed to enter into this Agreement pursuant to Section 3.1.2 of the Disputes Board Agreement.

NOW THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein and in the Disputes Board Agreement, the receipt and sufficiency of which the parties hereto hereby acknowledge, the parties hereto hereby agree as follows:

Section 1. Definitions and References.

1.1 Definitions. All capitalized terms used in this Agreement and not defined or modified herein shall have the same meaning as set forth in the CMA Documents and, if not defined therein, in the Disputes Board Agreement.

1.2 Reference to Disputes Board Agreement and Section 17.3 of CMA. The Disputes Board Agreement and Section 17.3 of the CMA, which, among other things, discusses the Disputes Board's role in resolving Disputes, are incorporated herein by reference.

Section 2. Appointment.

2.1 Appointment. The Appointing Party appoints the Disputes Board Member to the Disputes Board to serve thereupon and resolve the applicable Dispute, and the Disputes Board Member accepts such appointment and agrees to perform such service, each in accordance with the terms and conditions of Section 17.3 of the CMA, the Disputes Board Agreement and this Agreement.

2.2 Term of Service. The Disputes Board Member shall serve on the Disputes Board through resolution of the Dispute before the Disputes Board and issuance of the Final Order Implementing Decision in respect thereto, except that (a) unless he or she is the Disputes Board Chair, he or she may be earlier dismissed from service pursuant to Section 5.3.3(b) of the Disputes Board Agreement because the dispute to be resolved is a Small Claim; (b) the Disputes Board Member may resign for health considerations or other reasons of disability; or (c) the Disputes Board Member shall resign if he or she discovers facts or circumstance that would, in such member's reasonable good faith judgment, prevent such member from discharging his or her duties in the resolution of a Dispute in the impartial and objective manner required under the Disputes Board Agreement or facts or circumstances that such member reasonably and in good faith believes would result in a Party terminating such member's appointment For Cause. The Disputes Board Member shall endeavor to give 30 days' notice prior to the effective date of his or resignation.

Section 3. Representations, Warranties and Covenants.

3.1 Representations and Warranties. The Disputes Board Member hereby represents and warrants to TxDOT and Maintenance Contractor, under penalty of perjury, that such Disputes Board Member satisfies the Disputes Board Member Qualifications.

3.2 Covenants. The Disputes Board Member covenants to TxDOT and Maintenance Contractor that he or she:

(a) Shall be bound by and perform such member's obligations with respect to the Dispute Resolution Procedures in accordance with the procedures established under Section 17.3 of the CMA;

(b) Shall not engage in any conduct, including, but not limited to, having any communications, dealings or interactions with either Party, the Conflicts Group or any other Person in any manner, that would be or result in a Disputes Board Error; and

(c) Shall preserve, maintain and protect the confidentiality of Confidential Materials in accordance with Section 17.3.10 of the CMA.

Section 4. Compensation.

4.1 Invoicing and Payment. The Disputes Board Member's hourly billing rate and costs and expenses for service on the Disputes Board or means for calculating same are attached hereto as Annex I. Invoicing and payment of fees, costs and expenses shall take place in accordance with Sections 9.1, 9.2 and 9.3 of the Disputes Board Agreement.

4.2 No Compensation After Termination. If the Disputes Board Member's appointment to the Disputes Board is terminated, whether For Cause or otherwise, the Disputes Board Member will not be entitled to receive payment for any services rendered or costs and expenses incurred after the date of termination of such appointment.

Section 5. General Provisions.

5.1 Third Party Beneficiary. Whichever of TxDOT or Maintenance Contractor that is not the Appointing Party is an express third party beneficiary of this Agreement entitled to enforce the terms and conditions hereof against the Disputes Board Member.

5.2 Nonassignability. The Disputes Board Member shall not assign or delegate any of the work or services to be rendered in connection with the Dispute Resolution Procedures without the prior written consent of both TxDOT and Maintenance Contractor.

5.3 Disputes Board Member as Independent Contractor. The Disputes Board Member is acting in the capacity of an independent contractor and not as an employee or agent of TxDOT or Maintenance Contractor. The Disputes Board Member is not entitled to any employee benefits from either Party.

5.4 Consequential Damages Waiver. In no event shall TxDOT or Maintenance Contractor have any liability to the Disputes Board Member other than for payment of the Disputes Board Member's fees, costs and expenses hereunder. Neither TxDOT nor Maintenance Contractor shall be liable to the Disputes Board Member for any special, consequential, indirect, enhanced, punitive, or similar damages (including lost profits that are not direct damages), including but not limited to attorneys' fees and expenses, arising under or in connection with this Agreement, and the Disputes Board Member expressly waives any right to the foregoing.

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without regard to conflicts of law principles that would refer one to the Laws of another State.

5.6 Entire Agreement. This Agreement, and the documents referenced herein, contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties hereto with respect to its subject matter.

5.7 Amendment in Writing. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

5.8 Survival. This Agreement shall automatically terminate upon expiration or termination of the Disputes Board Member's service hereunder, except that the provisions of this Section 5 shall survive termination of this Agreement.

5.9 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHERE, the parties hereto, intending to be legally bound, have executed this Agreement as of the day and year first set forth above.

Appointing Party:

Disputes Board Member:

[TxDOT or Maintenance Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Address:

Annex I
to
Disputes Board Member Joinder Agreement

Fees, Costs and Expenses

[to be attached]

ATTACHMENT 2 TO DISPUTES BOARD AGREEMENT

COMMERCIAL RULES

R-1. Agreement of The Parties

(a) The "Expedited Procedures" means the rules set forth in Sections E-1 through E-6 below. Unless the Parties determine otherwise, the Expedited Procedures shall apply to Fast-Track Disputes in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(b) The "Procedures for Large, Complex Commercial Disputes" means the rules set forth in Sections L-1 through L-3 below. Unless the Parties agree otherwise, such Procedures shall apply to all cases in which the Dispute is valued at \$500,000 or more, exclusive of claimed interest, fees and costs. The Parties may also agree to use such Procedures in cases involving non-monetary Disputes. Such Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(c) All other cases shall be administered in accordance with Sections R-2 through R-43 of these rules.

(d) If there is any inconsistency between these Commercial Rules and Section 17.3 of the CMA, Section 17.3 of the CMA shall control.

R-2. Disputes Board

The term "Disputes Board" in these Commercial Rules refers to the three member Disputes Board, constituted for a particular case, or to the Disputes Board Chair, as the context requires.

R-3. Assumed Objection

Unless the responding Party states otherwise in its response to the claiming Party's notice of referral of a Dispute to the Disputes Board, all aspects of the Dispute will be deemed to be denied by the other Party (other than any objection to the Disputes Board's authority to resolve the Dispute, which must be affirmatively asserted).

R-4. Changes of Claim

After notice of referral of a Dispute to the Disputes Board is given or received, if either Party desires to make any amended, new, or different claim or counterclaim, it shall be made in writing and filed with the Disputes Board. The Party asserting such an amended, new or different claim or counterclaim shall provide a copy to the other Party,

who shall have 15 days from the date of such transmission within which to file an answering statement with the Disputes Board.

R-5. Jurisdiction

(a) The Disputes Board shall have the power to rule on its own jurisdiction, i.e., to determine if an alleged Dispute is an Ineligible Matter.

(b) The Disputes Board shall rule on jurisdictional objections as a preliminary matter prior to proceeding with proceedings to resolve the underlying Dispute.

R-6. Administrative Conference

At the request of either Party or upon the Disputes Board's own initiative, the Disputes Board may conduct an administrative conference, in person or by telephone, with the Parties and/or their representatives. The conference may address such issues as the replacement of one or more Disputes Board Members, potential mediation of the Dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-7. Appointment

Because the Disputes Board Agreement between the Parties specifies a method of appointing a Disputes Board, that designation or method shall be followed.

R-8. Disclosure

(a) Any person appointed or to be appointed as a Disputes Board Member shall disclose to the Parties any circumstance likely to give rise to justifiable doubt as to such Disputes Board Member's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives. Such obligation shall remain in effect throughout the period of such member's service on the Disputes Board.

(b) In order to encourage disclosure by Disputes Board Members and candidates, disclosure of information pursuant to this R-8 is not to be construed as an indication that the disclosing individual considers that the disclosed circumstance is likely to affect impartiality or independence.

R-9. Disqualification of Disputes Board Member

Each Disputes Board Member shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:

(a) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) any grounds for disqualification provided by applicable law, the Disputes Board Agreement or the CMA Documents.

R-10. No Ex Parte Communication with Disputes Board Members

(a) During the period that any Disputes Board Member is then serving on a Disputes Board, (i) neither Party, including its counsel or designated representatives, shall communicate ex parte with such Disputes Board Member and (ii) no Disputes Board Member shall communicate ex parte with any Person (other than other Disputes Board Members), including but not limited to, either Party, its counsel or designated representatives, regarding any aspect of the applicable Dispute.

(b) Each Party may communicate with individuals listed on its respective Disputes Board Member Candidates' List for the purposes of (i) ascertaining their availability to serve on a particular Disputes Board and/or (ii) reconfirming such individuals' qualifications under the Disputes Board Member Qualifications and the absence of Conflicts of Interest and Misconduct, provided that the communicating Party simultaneously furnishes copies of all such written correspondence with such individuals to the other Party and gives the other Party advance notice and opportunity to participate in all verbal communication with such individuals. Ex parte communication regarding the substance of any Dispute between a Party and individuals listed on its respective Disputes Board Member Candidates' List is prohibited.

R-11. Hearings After Filling of Vacancies

In the event of the appointment of a substitute Disputes Board Member, the panel of Disputes Board Members shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-12. Preliminary Hearing

(a) At the request of either Party or at the discretion of the Disputes Board, the Disputes Board may schedule as soon as practicable a preliminary hearing with the Parties and/or their representatives. The preliminary hearing may be conducted by telephone at the Disputes Board's discretion.

(b) During the preliminary hearing, the Parties and the Disputes Board should discuss the future conduct of the case, including clarification of the nature of the Dispute, a schedule for the hearings and any other preliminary matters.

R-13. Exchange of Information; Discovery

(a) At least five Business Days prior to the hearing, the Parties shall exchange (i) copies of all exhibits they intend to submit at the hearing and (ii) lists of witnesses anticipated to be called at the hearing, in each case except for witnesses or exhibits to be offered for the purpose of impeachment or rebuttal.

(b) The Disputes Board Chair is authorized to resolve any disputes concerning the exchange of information or the Parties' discovery.

R-14. Date, Time, and Place of Hearing

The Disputes Board Chair shall set the date, time, and place for each hearing at a neutral and reasonably cost-efficient location in Travis County, Texas that is reasonably convenient for the Parties. The Parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The Disputes Board shall send a notice of hearing to the Parties at least 5 Business Days in advance of the hearing date, unless otherwise agreed by the Parties.

R-15. Attendance of Witnesses

Except for each Party's counsel and other authorized representative, upon the request of either Party or its own initiative, the Disputes Board shall have the power to require the exclusion of any witness or potential witness during the testimony of any other witness.

R-16. Representation

Each Party may be represented by counsel or other authorized representative. A Party intending to be so represented shall notify the other Party and the Disputes Board of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates or responds for a Party in the course of the Dispute Resolution Procedures, notice is deemed to have been given by the Party represented by such representative.

R-17. Dispute Board Members' Certifications; Witness Oaths

Before proceeding with the first hearing, each Disputes Board Member shall have entered into a Disputes Member Joinder Agreement with a Party in which he or she certifies, under penalty of perjury as to his or her meeting the Disputes Board Member Qualification and the absence of Conflicts of Interest and Misconduct (and a covenant to not engage in Misconduct). The Disputes Board shall require witnesses to testify under oath.

R-18. Stenographic Record

Any Party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other Party of these arrangements at least three days in advance of the hearing. The requesting Party shall pay the cost of the record. If the transcript is agreed by the Parties, or determined by the Disputes Board to be the official record of the proceeding, it must be provided to the Disputes Board and made available to the other Party for inspection, at a date, time, and place determined by the Disputes Board.

R-19. Interpreters

Any Party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-20. Postponements

The Disputes Board may postpone any hearing upon agreement of the Parties, upon request of a Party for good cause shown, or upon the Disputes Board's own initiative for good cause shown.

R-21. Proceedings in the Absence of a Party or Representative

The Dispute Board's proceedings may proceed in the absence of either Party or representative who, after due notice, fails to be present or fails to obtain a postponement. An Disputes Board Decision shall not be made solely on the default of a Party. The Disputes Board shall require the Party who is present to submit such evidence as the Disputes Board may require for the making of a Disputes Board Decision.

R-22. Conduct of Proceedings

(a) The claimant Party shall present evidence to support its claim. The respondent Party shall then present evidence to support its defense. Witnesses for each Party shall also submit to questions from the Disputes Board and the adverse Party. The Disputes Board has the discretion to vary this procedure, provided that the Parties are treated with equality and that each Party has the right to be heard and is given a fair opportunity to present its case.

(b) The Disputes Board, exercising is discretion, shall conduct the proceedings with a view to expediting the resolution of the Dispute and may direct the order of proof, bifurcate proceedings and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The Parties may agree to waive oral hearings in any case.

R-23. Evidence

(a) The Parties may offer such evidence as is relevant and material to the Dispute and shall produce such evidence as they or the Disputes Board deems relevant and necessary to an understanding and determination of the Dispute. Conformity to the Texas Rules of Evidence shall be required, except where these Commercial Rules contain a contrary rule. All evidence shall be taken in the presence of all of the Disputes Board Members and both of the Parties, except where a Party fails to attend the hearing or has waived the right to be present.

(b) Subject to the Texas Rules of Evidence, the Disputes Board shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the Disputes Board to be cumulative or irrelevant.

(c) The Disputes Board shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) Special discovery and evidentiary rules:

(i) The Disputes Board Chair shall, at the request of either Party, issue subpoenas for the attendance of witnesses or the production of books, records, documents or other evidence, whether for deposition or for hearing, in the manner provided by law for issuance of a subpoena in a civil action pending in a state district court. All provisions of the Texas Rules of Civil Procedure for service and response to subpoenas in a civil action pending in state district court shall apply to subpoenas issued pursuant hereto.

(ii) Each Party shall be entitled to take depositions of witnesses and to propound written discovery in the manner, and to the extent, provided by Law for discovery in a civil action pending in a state district court, consistent with Rule 190.3 of the Texas Rules of Civil Procedure. The Disputes Board Chair shall, at the request of either Party, or may, on his or her own initiative, adopt a discovery control plan as contemplated by Rule 190.4 of the Texas Rules of Civil Procedure.

(iii) The disclosure of expert witness information and the depositions of designated expert witnesses shall be conducted as provided by the Texas Rules of Civil Procedure for cases in state district court.

(iv) At the hearing, each Party shall have the right to be heard, to present evidence, including expert witness testimony, and to cross-examine witnesses.

R-24. No Evidence by Affidavit; Post-hearing Filing of Documents or Other Evidence

(a) The Disputes Board may not receive and consider the evidence of witnesses by declaration or affidavit.

(b) If the Parties agree or the Disputes Board directs that documents or other evidence be submitted to the Disputes Board after the hearing, the documents or other evidence shall be transmitted to each Disputes Board Member. Both Parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-25. Inspection or Investigation

The Disputes Board may find it necessary to make an inspection or investigation in connection with its proceedings and, if so, shall so advise the Parties. The Disputes Board shall set the date and time of such inspection or investigation and notify the

Parties thereof. Any Party who so desires may be present at such an inspection or investigation. In the event that one or both The Parties are not present at the inspection or investigation, the Disputes Board shall make an oral or written report to the Parties on the result or findings from such inspection or investigation and afford them an opportunity to comment.

R-26. Interim Measures

(a) The Disputes Board may take whatever interim measures it deems necessary, including measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim Disputes Board Decision.

(c) A request for interim measures addressed by a Party to a Travis County, Texas district court shall not be deemed incompatible with the agreement to have the underlying Dispute resolved by the Disputes Board or a waiver of the right to have the underlying Dispute resolved by the Disputes Board.

R-27. Closing of Hearing

The Disputes Board shall specifically inquire of both Parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Disputes Board shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Disputes Board for the receipt of briefs. If documents are to be filed as provided in R-24 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the Disputes Board is required to make the Disputes Board Decision shall commence, in the absence of other agreements by the Parties, upon the closing of the hearing.

R-28. Reopening of Hearing

The hearing may be reopened only upon application of a Party for good cause shown, as determined in the discretion of the Disputes Board, at any time before the Disputes Board Decision is issued. The Disputes Board may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to issue the Disputes Board Decision.

R-29. Waiver of Rules

Any Party who proceeds with the Disputes Board proceedings after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing to the other Party and the Disputes Board shall be deemed to have waived the right to object.

R-30. Extensions of Time

The Parties may modify any period of time in these rules by mutual agreement. The Disputes Board may for good cause extend any period of time established by these rules, except the time for issuance of the Disputes Board Decision. The Disputes Board shall notify the Parties of any extension.

R-31. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of Disputes Board proceedings under these rules, for any court action in connection therewith, or for the entry of judgment on any Disputes Board Decision made under these rules shall be given in accordance with Section 19.11 of the CMA.

(b) Unless otherwise instructed by the Disputes Board, any documents submitted by either Party to the Disputes Board shall simultaneously be provided to the other Party.

R-32. Majority Decision

When the panel consists of more than one Disputes Board, a majority of the Disputes Board Members must make all decisions.

R-33. Time of Issuance of the Disputes Board Decision

The Disputes Board Decision shall be issued promptly by the Disputes Board and no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

R-34. Form of Disputes Board Decision

(a) Any Disputes Board Decision shall be in writing and signed by a majority of the Disputes Board Members.

(b) The Disputes Board shall also issue written findings of fact and conclusions of law to accompany the Disputes Board Decision.

R-35. Scope of Disputes Board Decision

(a) The Disputes Board may determine the occurrence of any event that is a prerequisite to a Party's claim for any remedy or relief in the Dispute, and grant any remedy or relief to resolve the Dispute, that the Disputes Board deems just and equitable and within the scope of the agreement of the Parties under Section 17.3 of the CMA, including, but not limited to, specific performance of any obligation under the CMA documents.

(b) In addition to a final Disputes Board Decision, the Disputes Board may make other decisions, including interim, interlocutory, or partial rulings, orders, and decisions. In any interim, interlocutory, or partial Disputes Board Decision, the Disputes Board may assess and apportion the fees, expenses, and compensation related to such Disputes Board Decision as the Disputes Board determines is appropriate, subject, however, to the limitations of the Disputes Board's authority in Section 17.3.4.1(e) of the CMA.

(c) In the final Disputes Board Decision, the Disputes Board shall assess compensation amounts. The Disputes Board may apportion fees and expenses between the Parties in such amounts as the Disputes Board determines is appropriate in its discretion, subject, however, to the limitations of the Disputes Board's authority under Section 17.3.4.1(e).

R-36. Disputes Board Decision upon Settlement

If the Parties settle the Dispute during the course of the Disputes Board proceedings and if the Parties so request, the Disputes Board may set forth the terms of the settlement in a "consent Disputes Board Decision."

R-37. Acceptance of Delivery of Disputes Board Decision

The Parties shall accept as notice and delivery of the written Disputes Board Decision, together with the written findings of fact and conclusions of law, addressed and provided to them in the manner provided under Section 19.11 of the CMA.

R-38. Correction of Errors in Disputes Board Decision

Within 5 Business Days after the transmittal of a Disputes Board Decision, either Party, upon notice to the other Party, may request the Disputes Board, through the Disputes Board Chair, to correct any clerical, typographical, or computational errors in the Disputes Board Decision. The Disputes Board is not empowered under this R-38 to redetermine the merits of any Dispute already decided. The other Party shall be given 5 Business Days to object to the request on the ground that there is no clerical, typographical, or computational error in the decision. The Disputes Board shall perform the request correction of errors within 10 Business Days after transmittal by the Disputes Board Chair of the request for correction of errors unless the other Party objects. Any unresolved disagreement between the Parties as to the existence of a

clerical, typographical, or computational error in the Disputes Board Decision can be subsequently pursued, if at all, under R-28.

R-39. Release of Documents for Subsequent Proceedings

The Disputes Board shall, upon the written request of a Party, furnish to the Party, at the Party's expense, certified copies of any papers in the Disputes Board's possession that may be required in further administrative or judicial proceedings relating to resolution of the Dispute.

R-40. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a Party relating to a Dispute shall be deemed a waiver of the Party's right to have the Dispute resolved by Dispute Board proceedings.

(b) Neither any Disputes Board Member nor the Disputes Board in a proceeding under these rules is a necessary or proper Party in judicial proceedings relating to a Dispute.

R-41. Expenses

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the Dispute Board's proceedings, including required travel and other expenses of the Disputes Board, Disputes Board representatives, and any witness and the cost of any proof produced at the direct request of the Disputes Board, shall be borne equally by the Parties, unless they agree otherwise or unless the Disputes Board in the Disputes Board Decision assesses such expenses or any part thereof against any specified Party or The Parties (in the latter case subject, however, to the limitations of the Disputes Board's authority under Section 17.3.4.1(e)).

R-42. Interpretation and Application of Rules

The Disputes Board shall interpret and apply these rules insofar as they relate to the Disputes Board's powers and duties to resolve the particular Dispute for which such Disputes Board was empanelled to resolve.

R-43. No Suspension for Nonpayment

If a Disputes Board Member's compensation or administrative charges have not been paid in full, such Disputes Board Member may so inform the Parties in order that one of them may advance the required payment. If such payments are not made, and the non-paying Party does not within 30 days after its receipt of the unpaid Disputes Board Member's invoice provide notice to such member and the other Party as to such Party's dispute of such member's invoice, the Disputes Board may order the suspension or termination of the proceedings. If a Party disputes a Disputes Board Member's invoice and provides such notice, no suspension or termination of the proceedings shall occur. Ex parte conversations to resolve a fee dispute between the Dispute Board

Member whose invoice is disputed and the disputed Party are prohibited during the Dispute Board's resolution of the Dispute, and any such conversations shall be deferred until the Disputes Board Decision is final.

EXPEDITED PROCEDURES FOR FAST-TRACK DISPUTES

E-1. Serving of Notices

In addition to notice provided pursuant to Section 19.11 of the CMA, the Parties can agree in writing to also accept notice by telephone. If the Parties so agree, a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-2. Exchange of Exhibits

At least two Business Days prior to the hearing, the Parties shall exchange copies of all exhibits they intend to submit at the hearing. The Disputes Board shall resolve disputes concerning the exchange of exhibits.

E-3. Proceedings on Documents

Where no Party's claim exceeds \$10,000, exclusive of interest and arbitration costs, and other cases in which the Parties agree, the Dispute shall be resolved by submission of documents, unless either Party requests an oral hearing, or the Disputes Board determines that an oral hearing is necessary. The Disputes Board shall establish a fair and equitable procedure for the submission of documents.

E-4. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the Disputes Board shall set the date, time, and place of the hearing, to be scheduled to take place within 10 days after appointment of the Disputes Board Chair. The Disputes Board will notify the Parties in advance of the hearing date.

E-5. The Hearing

(a) Each Party shall have equal opportunity to submit its proofs and complete its case.

(b) The Disputes Board shall determine the order of the hearing and schedule and control its duration consistent with the objective of expedited resolution of the Fast-Track Dispute, and may require further submission of documents within two days after the hearing. For good cause shown, the Disputes Board may schedule additional hearings within seven Business Days after the initial hearing.

(c) Any Party desiring a stenographic record may arrange for one pursuant to the provisions of R-18.

E-6. Time of Award

Unless otherwise agreed by the Parties, the Disputes Board Decision shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Parties' transmittal of the final statements and proofs to the Disputes Board.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the commencing proceedings to resolve a Dispute, the Disputes Board shall, unless the Parties agree otherwise, conduct an administrative conference with the Parties and/or their attorneys or other representatives by conference call within 7 days after the Disputes Board Chair is appointed. In the event the Parties are unable to agree on a mutually acceptable time for the administrative conference, the Dispute Board shall, upon three Business Days' advance notice, schedule the administrative conference for 9 a.m. (CST) on the fourth Business Day and such administrative conference shall take place at such date and time. Such administrative conference shall be conducted for the following purpose of obtaining additional information about the nature and magnitude of the Dispute and the anticipated length of hearing and scheduling and for such additional purposes as the Parties or the Disputes Board may deem appropriate.

L-2. Preliminary Hearing

As promptly as practicable after the appointment of the Disputes Board, a preliminary hearing shall be held among the Parties and/or their attorneys or other representatives and the Disputes Board. If the Parties agree, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of the Dispute, including damages and defenses, a statement of the issues asserted by each Party and positions with respect thereto, and any legal authorities the Parties may wish to bring to the attention of the Disputes Board;

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted, in light of the special discovery and evidentiary rules set forth above in R-23(d);

(d) exchange and premarking of those documents which each Party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the Parties and/or order of the Disputes Board Chair, the pre-hearing activities and the hearing procedures that will govern the Disputes Board's proceedings will be memorialized in a scheduling and procedure order (each, a "**Scheduling and Procedure Order**"). Nothing in any Schedule and Procedure Order shall conflict with the procedures established under Section 17.3 of the CMA.

L-3. Management of Proceedings

(a) The Disputes Board shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial Cases, provided, however, that no action by the Disputes Board under this L-3 shall conflict with the procedures established under Section 17.3 of the CMA.

(b) The Parties shall cooperate in the exchange of documents, exhibits and information within such Party's control if the Disputes Board(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The Parties may conduct discovery, subject to any limitations deemed appropriate and set forth in the discovery control plan and/or the Scheduling and Procedure Order. If the Parties cannot agree on production of documents and other information, the Disputes Board, consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) The Parties shall exchange copies of all exhibits they intend to submit at the hearing 10 Business Days prior to the hearing unless the Disputes Board Chair determines otherwise.

(e) The exchange of information pursuant to this rule, as agreed by the Parties and/or directed by the Disputes Board Chair, shall be included within the Scheduling and Procedure Order.

(f) The Disputes Board is authorized to resolve any disputes concerning the exchange of information.

(g) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Attachment 9

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 2

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date:
month/day/year

Texas Department of Transportation
Fort Worth District
P O. Box 6868
Fort Worth, TX 76115-0868

Shaded Cells Require Entry, if applicable

Draw Request for Capital Maintenance Work performed in the month of , (year)

DFW Connector

A	Month #	Maintenance Year #	Escalated Monthly Maintenance Fee (from Page 4)
	(1-12)	(1-15)	
B	Amount Earned this Month		\$0.00
C	Total Change Order Amount Due (from Page 5)		
D	Total Liquidated Damages Amount Due (from Page 6)		
E	Current Amount Due (B + C - D)		\$0.00

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 2 of 2

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date: 12/5/2013
month/day/year

Request for Payment:

Developer Authorized Representative Date

Review by TxDOT Finance Director:

Review and Final Approval by TX DOT

Draw Request Approved for Payment: Yes No

TXDOT Authorized Representative Date

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

MAINTENANCE DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- Certification by the Maintenance QC Manager
- Draw Request data sheet(s) and documents that support and substantiate the amount requested.

NOTE - following for information only

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

- Except as specifically noted in the certification, all Capital Maintenance Work, including that of designers, Subcontractors, Suppliers and Fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Maintenance QC Manager;
- Except as specifically noted in the certification, all Capital Maintenance Work which is the subject of the Draw Request conforms to the requirements of the CMA Documents, the Governmental Approvals and applicable Law.
- The Maintenance QCP procedures provided therein are functioning properly and are being followed.

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
 Texas Department of Transportation Project

Draw Request #

Date
month/day/year

Texas Department of Transportation
 Fort Worth District
 P. O. Box 6868
 Fort Worth, TX 76115-0868

Enter Shaded Cells only if Applicable

Monthly Maintenance Fee and Escalation Calculations

Note: This form needs to be completed for the 1st month of each maintenance year

DFW Connector

Date of Substantial Completion:
month/day/year

Days to End of Month (A) =

Year X Maintenance Fee (from Proposal) = (B)

Year X Maintenance Fee (Escalated) (C) = ¹

¹ As per CMA Section 8.1.3, (B) times the ENR CCI three months prior to the start of maintenance year X (D), divided by the ENR CCI three months prior to the execution of the CMA (E)

(X) = (B) (Maintenance Year)

(D) = (E) =

(C) = (B x (D/E))

Year X Monthly Maintenance Fee (Escalated) (F) = Year X Maintenance Fee (Escalated) (C) divided by 12

(F) = (C)/12

Year 1 Maintenance Fee (from Proposal) = (G)

Year 1 Maintenance Fee (Escalated) (H) = ²

² As per CMA Section 8.1.3, (G) times the ENR CCI three months prior to substantial completion (I), divided by the ENR CCI three months prior to the execution of the CMA (E)

(I) =

(E) =

(H) = (G) x (I)/(E)

Year 1 Monthly Maintenance Fee (Escalated) (J) = Year 1 Maintenance Fee (Escalated) (H) divided by 12

(J) = (H)/12

Year 1 Month 1 Maintenance Fee (Escalated) (K) = Year 1 Monthly Maintenance Fee (Escalated) (J) times the number of days remaining in the 1st month, after the Date of Substantial Completion (A) divided by the days in the month (L)

³ Assuming that Substantial Completion does not occur on the last day of the month:

(L) =

(K) = (J) x (A)/(L)

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date:
month/day/year

Texas Department of Transportation
 Fort Worth District
 P.O. Box 6968
 Fort Worth, TX 76115-0968

Enter Shaded Cells only if Applicable

Draw Request for Capital Maintenance Work performed in the month of November, 2013 (year)

Change Order Number	1								
Change Order Amount	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Date Change Order Work Began <small>example format (2/4/2014)</small>									
Date C.O. Work Completed <small>example format (4/20/2014)</small>									
A Previous C.O. Amount Earned	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
B C.O. Earned this Month	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
C C.O. Earned to Date (A+B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
D Current C.O. Amount Due (B)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total All Change Orders To Date	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

EXHIBIT 11
Capital Maintenance Form of Draw Request and Certificate

Page 1 of 1

DFW Connector Capital Maintenance Agreement
Texas Department of Transportation Project

Draw Request #

Date
month/day/year

Texas Department of Transportation
Fort Worth District
P O Box 6888
Fort Worth, TX 76115-0888

Enter Shaded Cells only if Applicable

Lane Closure Fee and Escalation Calculations

Note: This form needs to be completed for the 1st month of each maintenance year

DFW Connector

Date of Substantial Completion
month/day/year

Year X Maintenance Fee (from Proposal) = (A)

Year X hourly Lane Closure Liquidated Damage Fee (D) = ¹

¹ As per CMA Section 12.4.2, the hourly Lane Closure Liquidated Damage Fee (D) is to be escalated \$200 (B) per year on each anniversary of the Initial Maintenance Commencement Date

(B) = (Annual hourly Lane Closure Liquidated Damage Fee escalation)

(C) = (Current Contract Maintenance year (1-15))

(D) = (A + (B x (C-1)))

Lane-Hours of Lane Closures (E) subject to Lane Closure Liquidated Damage Fee (D)

(E) =

Total Lane Closure Liquidated Damage (F)

(F) = (D x E)

Attachment 10

ATTACHMENT 6 : RESTRICTIONS ON TRAFFIC MANAGEMENT

NoneNo Liquidated Damages for Lane Closures will be assessed during the first year of the Initial Maintenance Term.