

**EXHIBIT 3**  
**FORM OF LEASE**  
**AND AMENDMENT TO LEASE**

**PROJECT LEASE**  
**IH 635 Managed Lanes Project**

**by and between**

**TEXAS DEPARTMENT OF TRANSPORTATION**  
**("TxDOT")**

**and**

**LBJ INFRASTRUCTURE GROUP LLC,**  
**a Delaware Limited Liability Company**  
**("Developer")**

Dated \_\_\_\_\_, 20\_\_

**PROJECT LEASE  
IH 635 Managed Lanes Project**

This lease (the "Lease") is made and entered into as of \_\_\_\_\_, 20\_\_\_, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Texas ("TxDOT"), and **LBJ INFRASTRUCTURE GROUP LLC**, a Delaware limited liability company ("Developer").

**RECITALS**

A. TxDOT and Developer have entered into that Comprehensive Development Agreement (IH 635 Managed Lanes Project) dated as of \_\_\_\_\_, 2009 (the "Agreement"). In the Agreement, to which a form of this lease constitutes Exhibit 3, TxDOT confers upon Developer certain rights to finance, develop, design, acquire, construct, use, toll, operate and maintain the Project described therein.

B. Pursuant to the Agreement, Developer has constructed the Project on the Project Right of Way described below, to which entry and/or other rights necessary for construction of the Project were granted by TxDOT to Developer pursuant to the Agreement.

C. TxDOT intends to lease the Project and the Project Right of Way, subject to restrictions in Section 1.2, to Developer, and Developer desires to lease the Project and the Project Right of Way from TxDOT, on the terms and conditions provided herein.

D. This Lease, together with all exhibits hereto, as originally executed or as it may from time to time be supplemented, modified or amended, is hereinafter referred to as the "Lease".

**ARTICLE I**

**LEASE, PREMISES, TITLE AND TERM**

**Section 1.1. Lease of Premises.** TxDOT hereby leases, lets, demises and rents to Developer, and Developer hereby leases and rents from TxDOT, all the real property described in Exhibit A attached hereto, together with all the improvements now or hereafter located thereon owned by TxDOT, including the portion of the Project thereon, subject to the exclusions and reservations set forth in Section 1.2 (the "Premises"), in accordance with the terms described herein.

**Section 1.2. Exclusions and Reservations.**

(a) The Premises, and Developer's leasehold estate hereunder, specifically exclude any and all Airspace. There are hereby reserved to TxDOT all rights to own, lease, sell, assign, transfer, utilize, develop or exploit the Airspace for purposes of pursuing Business Opportunities to the extent permitted under, and subject to the terms of, Section 11.2 of the Agreement; and Developer shall not engage in any activity respecting or infringing upon the Airspace. TxDOT hereby reserves a non-exclusive easement over the Premises for access to and from the Airspace for development, maintenance, repair, replacement, operation, use and

enjoyment of the Airspace for such purpose. (Airspace shall have the meaning provided in the Agreement.)

(b) TxDOT reserves the right to enter upon, possess, control and utilize the Premises with or without payment of compensation to Developer to the extent and only to the extent specifically permitted in the CDA Documents.

(c) TxDOT reserves the right to grant to other parties utility and other permits and easements and modifications thereto and rights of use to the extent and only to the extent provided in Sections 7.5.8 and 8.1.5 of the Agreement.

**Section 1.3. Title.** Fee title to the Premises is and at all times shall remain vested in TxDOT, subject to Developer's leasehold estate under this Lease.

**Section 1.4. Term.**

(a) The term of this Lease shall commence upon the Operating Commencement Date that first occurs and shall continue until the date that is 52 years after the Effective Date.

(b) The term of this Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of this Lease, as provided in Section 19.6 of the Agreement.

(c) The term of this Lease may be extended only as provided in the Agreement.

(d) Developer agrees and acknowledges that neither the signing of this Lease nor its expiration or earlier termination for any reason shall entitle Developer to assistance under Texas Property Code Section 21.046, Texas Administrative Code Section 43, Chapter 21, subchapter G, Texas Transportation Commission Minute Orders 65168 and 78183, and any amendments thereto, or under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act, as amended, 42 U.S.C. Sections 4651 et seq. and any amendments thereto.

## ARTICLE II

### RENT, TAXES, OTHER CHARGES

**Section 2.1. Rent.** As rent for the Premises, Developer shall pay to TxDOT the Revenue Payment Amount, as set forth in Section 5.3 of the Agreement and Part C of Exhibit 7 to the Agreement. Developer's payment obligations are subject to the terms of the Agreement.

**Section 2.2. Taxes.** TxDOT shall have no liability with respect to any real property or possessory interest tax imposed on Developer's interest in the Premises or any part thereof by any Governmental Entity, except to the extent specifically provided otherwise in the Agreement or resulting from TxDOT's exercise of its rights with respect to Business Opportunities.

**Section 2.3. Other Charges.** TxDOT shall have no liability with respect to any water, electric, gas, and other lighting, heating, power and utility charges accruing or payable in connection with Developer's use of the Premises during the term of this Lease, other than as paid in connection with a Compensation Event under the Agreement.

## ARTICLE III

### USE

**Section 3.1. Use.** During the term of this Lease, Developer shall use the Premises only for the purposes of performing the Work, holding the Project open for public use as a highway Project, and tolling the Project in accordance with the Agreement. Developer's right to perform the Work, hold the Project open for public use and toll the Project during the term of this Lease is hereby specifically permitted, authorized and granted by TxDOT. Such use shall be in accordance with and subject to the terms, provisions, conditions and limitations set forth in the CDA Documents.

### Section 3.2. Mechanic's Liens.

(a) Developer acknowledges and agrees that neither TxDOT nor TxDOT's right, title and interest in and to the Project and Project Right of Way may or shall be subject to claims or liens for labor or materials in any way arising out of or relative to Developer's activities, including Design Work and Construction Work.

(b) In the event any lien for labor or materials is recorded upon TxDOT's interest in the Premises, Developer shall, within 60 days after obtaining knowledge thereof:

- (i) Record a valid release of lien;
- (ii) Procure and record a bond in such form and amount and issued by such surety as is required by applicable Laws to release TxDOT's interest in the Premises from the lien and from any action brought to foreclose the lien; or
- (iii) Deposit with a third party escrow agent reasonably acceptable to TxDOT sufficient cash to cover the amount of the subject lien claim, including interest and costs; under irrevocable, binding authorization and instructions for the escrow agent to pay out of such deposit to any subsequent judgment holder the amount of any judgment arising from litigation with regard to the subject lien. The giving of any contrary instructions by Developer shall be strictly prohibited and constitute a default by Developer hereunder.

## ARTICLE IV

### ASSIGNMENT, SUBLETTING AND CHANGE IN CONTROL

#### Section 4.1. Assignment by Developer.

(a) Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber its interests in this Lease or the Premises except to the extent specifically permitted under Article 21 of the Agreement.

(b) Developer shall not sublease or grant any other special occupancy or use of the Premises to any other Person except to the extent specifically permitted under Article 21 of the Agreement.

(c) Developer shall not voluntarily or involuntarily cause, permit or suffer any Change in Control except to the extent specifically permitted under Article 21 of the Agreement.

**Section 4.2. Assignment by TxDOT.** TxDOT may transfer and assign its rights, title and interests in the Agreement, this Lease and other CDA Documents as provided in Section 21.4 of the Agreement.

**Section 4.3. Notice and Assumption.** Assignments and transfers permitted under Section 4.1 shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable assumption by the transferee (except as otherwise provided in Section 21 of the Agreement) in form and substance set forth in Section 21.5 of the Agreement.

## ARTICLE V

### ENCUMBRANCE AND LENDER RIGHTS

**Section 5.1. Funding Agreements and Security Documents.** The rights of Developer to mortgage, pledge, hypothecate, deed in trust or assign to any Lender Developer's interest in the leasehold estate created by this Lease, are set forth in, and subject to the terms and conditions of, Article 4 of the Agreement.

**Section 5.2. Lenders' Rights.** Any Lender that holds a Funding Agreement and Security Document and satisfies the conditions and limitations set forth in Section 20.1 of the Agreement shall have and retain the rights specified in Article 20 of the Agreement, which rights, including Lender third party beneficiary rights, are, without duplication, applicable to this Lease.

## ARTICLE VI

### QUIET ENJOYMENT

**Section 6.1. Quiet Enjoyment.** Except as expressly provided otherwise by, and subject to all the terms and conditions of, this Lease and the other CDA Documents, TxDOT covenants that (a) Developer may quietly and peaceably hold, occupy, use and enjoy the Premises for the Term without ejection or interference by TxDOT or any Person claiming by, through or under TxDOT, and (b) TxDOT will protect and defend Developer's right to possession, control and operation of the Premises as provided in this Lease and CDA Documents against the claims of any Person claiming by, through or under TxDOT.

**Section 6.2. Right of Entry.** Developer shall permit TxDOT, the Independent Engineer and their respective authorized agents, employees, representatives, contractors and subcontractors to enter upon the Premises for any purpose relating to TxDOT's or the Independent Engineer's rights or obligations under the CDA Documents or Independent Engineer Agreement or under any other circumstances specified in this Lease and/or the other CDA Documents, including but not limited to the following:

(a) Entry upon the Premises to monitor, inspect and audit the same and Developer's activities as provided in the CDA Documents; and

(b) TxDOT's right to enter upon the Premises in the exercise of any of its remedies under Section 17.3 of the Agreement or upon effective termination of the Agreement.

No such exercise of the right of entry or loss of use of the Premises by reason thereof shall be compensable, except to the extent of any Compensation Amount or Termination Compensation that may be owing pursuant to the Agreement.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.1. Events of Default.** The events constituting a default of Developer under this Lease shall consist of:

(a) Failure by Developer to timely pay to TxDOT monies due and payable to TxDOT hereunder;

(b) Failure by Developer to observe and perform any covenant, term or condition required to be observed or performed by Developer under this Lease; and

(c) Each and every other Developer Default set forth in Section 17.1.1 of the Agreement.

For each of the above events constituting a default of Developer under this Lease, Developer shall be entitled to notice of default and opportunity thereafter to cure to the extent provided in the Agreement.

**Section 7.2. Remedies of TxDOT.** TxDOT's rights and remedies with respect to any default by Developer under this Lease shall be exclusively governed by the Agreement. In no event shall TxDOT have the right to terminate this Lease prior to termination of the Agreement in accordance with its terms.

**Section 7.3. No Double Recovery.** The double counting of a remedy because a default is simultaneously a default under this Lease and the Agreement is contrary to the intent of the Parties.

## ARTICLE VIII

### SURRENDER ON TERMINATION

On the Termination Date, this Lease shall terminate and Developer shall surrender possession and control of the Premises to TxDOT in accordance with all provisions of the CDA Documents, including but not limited to Sections 8.10 and 8.11 and Article 19 of the Agreement.

**ARTICLE IX**  
**MISCELLANEOUS**

**Section 9.1. Relationship of Parties.** The relationship of Developer to TxDOT under this Lease shall be one of lessee to lessor, and not of agent, partner, joint venturer or employee; and TxDOT shall have no rights to direct or control the activities of Developer or any Developer-Related Entity. Officials, employees and agents of TxDOT, including its Authorized Representative, shall in no event be considered employees, agents, partners or representatives of Developer or any Lender.

**Section 9.2. Waiver.** All the provisions respecting waiver of rights, obligations and remedies set forth in Section 24.4 of the Agreement are hereby incorporated herein by reference and made a part hereof.

**Section 9.3. Third Parties.** Nothing in the provisions of this Lease is intended to create duties or obligations to or rights in third parties not a party to this Lease, except for Lenders to the extent provided herein and in the Agreement, or to affect the legal liability of either Party by imposing any standard of care respecting duties and obligation different from the standard of care imposed by Law.

**Section 9.4. Notices.** All notices, authorizations and other communications required under this Lease between TxDOT and Developer shall be given as provided in Section 24.12 of the Agreement.

**Section 9.5. Agreement Controls.** The provisions of the Agreement shall apply to this Lease in the same manner as to the Agreement and are incorporated herein by reference. All capitalized terms used but not defined herein shall have the respective meanings given them in the Agreement.

**Section 9.6. Successors and Assigns.** This Lease shall be binding upon and shall inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

**Section 9.7. No Brokers.** Each Party represents and warrants that it has not dealt with any real estate broker or agent or any finder in connection with this Lease.

**Section 9.8. Disputes and Governing Law and Venue.** All Claims and Disputes arising under this Lease shall be resolved according to Sections 17.7 and 17.8 of the Agreement. This Lease shall be governed and construed in accordance with the laws of the State of Texas applicable to contracts executed and to be performed within such State.

**Section 9.9 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.

**Section 9.10. Severability.** If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforceable to the fullest

extent permitted by Law. The Parties intend and agree that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, the dispute resolution body shall supply as a part of this Lease an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Lease in two original counterparts on the date first written above.

**TxDOT**

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: Amadeo Saenz, P.E.  
Title: Executive Director

**DEVELOPER**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Carlos Ugarte  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: Joseph Aiello  
Title: Authorized Representative

**AMENDMENT TO PROJECT LEASE  
IH 635 Managed Lanes Project**

This Amendment to Lease (the "Amendment") is made as of \_\_\_\_\_, 20\_\_, by and between the TEXAS DEPARTMENT OF TRANSPORTATION, a public agency of the State of Texas ("TxDOT") and LBJ INFRASTRUCTURE GROUP LLC, a Delaware limited liability company ("Developer").

**RECITALS**

A. TxDOT and Developer executed a Project Lease dated \_\_\_\_\_, 20\_\_ (the "Lease"), covering certain premises that are a part of the IH 635 Managed Lanes Project and the Project Right of Way, and described in Article I of the Lease (the "Premises").

B. TxDOT and Developer desire to amend the Lease as set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT and Developer hereby amend the Lease as set forth below:

**AGREEMENT**

**Section 1. Definitions.** Capitalized terms used but not defined in this Amendment have the respective meanings set forth in the Lease.

**Section 2. Amendment of Premises.** There is hereby added to the Premises under the Lease all the real property described in Exhibit A attached hereto, together with all the improvements now or hereafter located thereon owned by TxDOT, including the portion of the Project thereon, subject to the exclusions and reservations set forth in Section 1.2 of the Lease (the "Added Premises"). TxDOT hereby leases, lets, demises and rents to Developer, and Developer hereby leases and rents from TxDOT, the Added Premises, on and subject to all the terms and conditions set forth in the Lease. Wherever the term "Premises" is used in the Lease, it is hereby deemed to include and refer to the Additional Premises.

**Section 3. No Further Amendments.** Except as expressly modified by this Amendment, all provisions of the Lease, as the same may have been amended prior to this Amendment, are hereby ratified and confirmed and shall remain in full force and effect.

**Section 4. 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 WHEREOF, the Parties, intending to be legally bound, have executed this Lease in two original counterparts on the date first written above.

[Signature Page Immediately Follows]

**TxDOT**

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**DEVELOPER**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware limited liability company

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

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

**After recording return document to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the TEXAS DEPARTMENT OF TRANSPORTATION, a public agency of the State of Texas ("TxDOT") and LBJ INFRASTRUCTURE GROUP LLC, a Delaware limited liability company ("Developer").

Witnesseth:

1. TxDOT and Developer have this day entered into a Lease (the "Lease") and on \_\_\_\_\_, 20\_\_ TxDOT and Developer entered into a related Comprehensive Development Agreement, IH 635 Managed Lanes Project (the "Agreement"). Under the Lease Developer has agreed to, and does hereby, lease from TxDOT, and TxDOT has agreed to, and does hereby, lease to Developer, on the terms and conditions set forth in the Lease, the premises in the County of Dallas in the State of Texas legally described in Exhibit A attached hereto and made a part hereof, all for the purpose described in the Lease and Agreement of financing, developing, constructing, operating and maintaining the Project on the Project Right of Way as described and defined in the Lease and Agreement. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreement.

2. The Lease sets forth the names and addresses of the parties thereto.

3. The term of the Lease for the property described in Exhibit A attached hereto commences upon the Operating Commencement Date that first occurs and shall continue until the date that is 52 years after the Effective Date.

4. The term of the Lease is subject to earlier termination in accordance with the Agreement. Termination of the Agreement in accordance with its terms shall automatically result in termination of the Lease, as provided in Section 19.6 of the Agreement. The term of this Lease may be extended only as provided in the Agreement.

5. In the event of any conflict between the terms of this Memorandum and the terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Memorandum of Lease on the date first written above, for the purpose of providing an instrument for recording.

**TxDOT**

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: Amadeo Saenz, P.E.  
Title: Executive Director

**DEVELOPER**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Carlos Ugarte  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: Joseph Aiello  
Title: Authorized Representative

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_ (insert the name and character of the officer),  
on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the  
oath of \_\_\_\_\_ or through \_\_\_\_\_ (description  
of identity card or other document) to be the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_ (insert the name and character of the officer),  
on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the  
oath of \_\_\_\_\_ or through \_\_\_\_\_ (description  
of identity card or other document) to be the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature



**After recording return document to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**AMENDMENT TO MEMORANDUM OF LEASE**

**THIS AMENDMENT TO MEMORANDUM OF LEASE** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, a public agency of the State of Texas ("TxDOT") and **LBJ INFRASTRUCTURE GROUP LLC**, a Delaware limited liability company ("Developer").

Witnesseth:

1. TxDOT and Developer entered into a Memorandum of Lease dated \_\_\_\_\_, 20\_\_ and recorded on \_\_\_\_\_, 20\_\_ in the official public records of the County of Dallas in the State of Texas as Document No. \_\_\_\_ (as the same may have been previously amended of record, the "Memorandum of Lease").

2. The premises subject to the Lease are hereby amended by adding the real property described in Exhibit A attached hereto.

3. Except as expressly amended hereby, the Memorandum of Lease remains unchanged and in full force and effect.

4. In the event of any conflict between the terms of this Amendment to Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Amendment to Memorandum of Lease on the date first written above, for the purpose of providing an instrument for recording.

**TxDOT**

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

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

Title: Executive Director

**DEVELOPER**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware limited liability company

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

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

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_ (insert the name and character of the officer),  
on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the  
oath of \_\_\_\_\_ or through \_\_\_\_\_ (description  
of identity card or other document) to be the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_ (insert the name and character of the officer),  
on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the  
oath of \_\_\_\_\_ or through \_\_\_\_\_ (description  
of identity card or other document) to be the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature

STATE OF TEXAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_ (insert the name and character of the officer),  
on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the  
oath of \_\_\_\_\_ or through \_\_\_\_\_ (description  
of identity card or other document) to be the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Personalized Seal)

\_\_\_\_\_  
Notary Public's Signature

## EXHIBIT 4

### TOLL REGULATION

#### **A. User Classifications**

“User Classifications” are defined by (a) occupancy combined with (b) either (i) vehicle dimensions and the presence or absence of one or more trailers as follows: Exempt Vehicles, High Occupancy Vehicles, Motorcycles, Single Occupancy Vehicles, Automobiles with one trailer, Large trucks, Large trucks with one trailer and Large trucks with more than one trailer or (ii) vehicle axle count as follows: Exempt Vehicles, High Occupancy Vehicles, Motorcycles, vehicles with 2 axles, vehicles with 3 axles, vehicles with 4 axles, vehicles with 5 axles and vehicles with 6 axles and (c) the class of Special Vehicles. The size of a trailer, or the combination of vehicle and trailer dimensions, does not affect a User Classification unless the combined dimensions exceed the characteristics of a Special Vehicle. The following definitions shall apply:

1. “Single Occupancy Vehicles” means motor vehicles other than Motorcycles without trailers, not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with one person as an occupant.
2. “High Occupancy Vehicles” means motor vehicles without trailers, not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with a minimum number of persons as occupants. The minimum number of occupants shall, as of the Effective Date, be two persons, but the minimum number of occupants may be changed at any time by written notice from TxDOT to Developer to either three persons or two persons, in TxDOT’s sole discretion.
3. “Automobiles with one trailer” means Single or High Occupancy Vehicles pulling one trailer, and the combined dimensions of the vehicle and trailer do not exceed the dimensions of a Special Vehicle.
4. “Large Trucks” means motor vehicles larger than Single Occupancy Vehicles but not larger than 46 feet in length, eight and a half feet in width and 12 feet in height.
5. “Large Trucks with one trailer” means Large Trucks pulling one trailer, and the combined dimensions of the vehicle and trailer do not exceed the dimensions of a Special Vehicle.
6. “Large Trucks with more than one trailer” means Large Trucks pulling more than one trailer, and the combined dimensions of the vehicle and all of its trailers do not exceed the dimensions of a Special Vehicle.
7. “Motorcycles” means motor vehicles with two or three wheels not larger than Single Occupancy Vehicles.
8. “Special Vehicles” means motor vehicles meeting one or more of the following characteristics: (i) over eight and a half feet in width; (ii) over 14 feet in height; (iii) over 73 and a half feet in length; (iv) over 80,000 pounds in weight; or (v) otherwise required to obtain a permit for travel on Highways under applicable Law.

## B. Toll Segments

1. The Managed Lanes are divided into toll segments ("Toll Segments"), measured between defined points. Toll Segment lengths are calculated along the centerline of the Managed Lanes and do not incorporate entrance and exit ramp lengths. The minimum Toll Segments required for the Managed Lanes are defined in Table B-1. For reference, see Figure B-1. Notwithstanding anything to the contrary herein, each Toll Segment shall be deemed to consist of only those Project Segments (or portions of Project Segments) within the Toll Segment that have achieved Service Commencement.

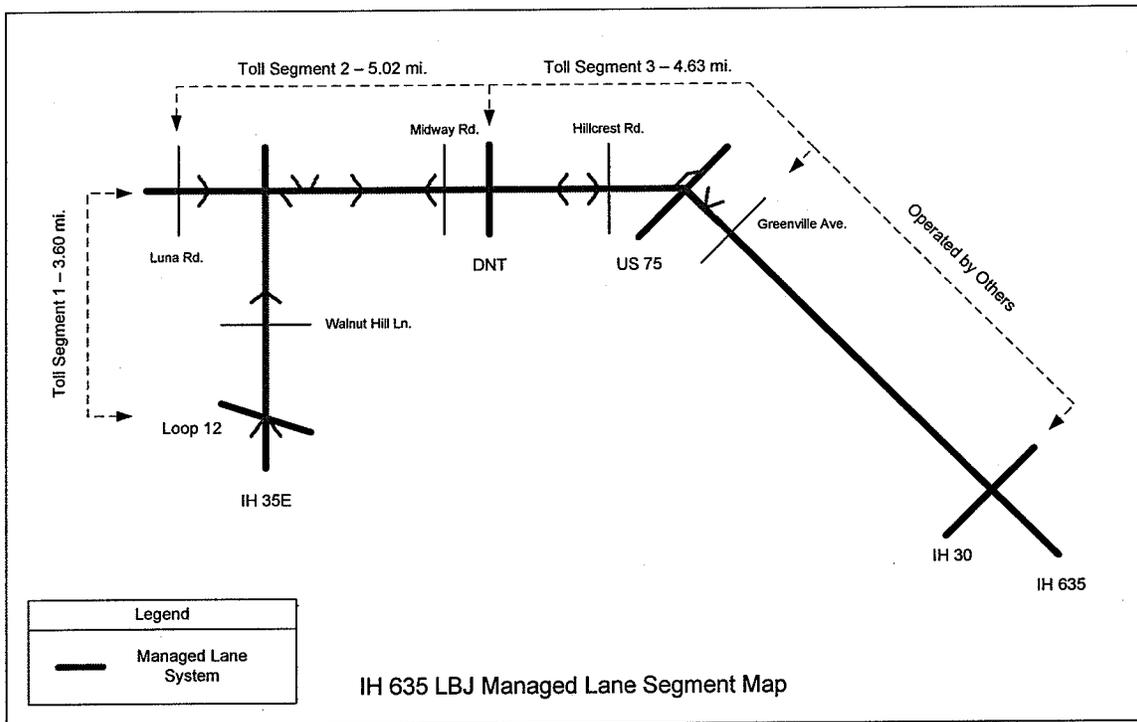
**Table B-1**

Toll Segment	Description	Point (STA)	Point (STA)	Length (mi.)
1	Loop 12 to IH 635	990+00	710+42 <sup>1</sup>	3.60
1a	IH 35E Capacity Improvement Section	IH 35E – 1049+93 IH 635 – 10580+56	IH 35E – 710+42 <sup>1</sup> IH 635 – 49+35 <sup>2</sup>	IH 35E – 2.47 IH 635 – 0.68
2	Luna Road to the Dallas North Tollway	10565+00	262+55 <sup>2</sup>	5.02
3	The Dallas North Tollway to US 75	262+55	507+00	4.63

<sup>1</sup> Station equation: 1153+81.75 BK = 684+00 AH

<sup>2</sup> Station equation: 10607+37 BK = 40+00 AH

Figure B-1



2. Developer shall not modify the Toll Segments unless it submits a justification to and receives a written approval from TxDOT in TxDOT's sole discretion before implementation.

### C. Toll Operations

1. During the initial 180 days after the first Service Commencement Date, Developer shall operate the Managed Lanes in each Toll Segment in Schedule Mode. After the initial 180 days after the first Service Commencement Date, Developer shall operate the Managed Lanes in each Toll Segment in Dynamic Mode.
2. At each entry point to each Toll Segment, Developer shall include a sign or a series of signs ("Toll Information Sign") that displays pricing for a minimum of the Toll Segment to be entered and a maximum of three Toll Segments. The Toll Information Signs shall meet the requirements of the Manual on Uniform Traffic Control Devices with reference to signage and be located to provide sufficient time for vehicles to elect not to enter the Toll Segment.
3. Notwithstanding anything herein to the contrary, under no circumstances shall a User be charged more than the lowest of the following: (a) a toll based on the latest published Base Toll Schedule (when in Schedule Mode); (b) a toll based on the latest published temporary discounts (if any); (c) a toll based on the latest published schedule of Toll Factors; (d) a toll based on the latest published schedule of Toll Segment Lengths (as defined in Section F.6); or (e) what is displayed to the User in any Toll Information Sign.

4. If Developer desires to establish or cancel a temporary discount with respect to any toll, it shall give written notice of the establishment or cancellation to TxDOT prior to implementation or withdrawal thereof.
5. At all times after 15 days prior to the first Service Commencement Date, Developer shall make available on an Internet website, through a telephonic request and upon request at Developer's offices during reasonable business hours, by facsimile copy without charge or by mailing a copy if the written request is accompanied by a self-addressed stamped envelope, the then-current Base Toll Schedule (when in Schedule Mode), temporary discounts (if any), schedule of Toll Factors for each User Classification, schedule of Toll Segment Lengths, schedule of Video Transaction Toll Premiums and schedule of Incidental Charges.
6. Subject to Section 3.1 of the Agreement, Developer shall have the right to charge a Toll Segment Toll (as defined in Section F.1). For the avoidance of doubt, in the event Developer is not subject to the NTTA Tolling Services Agreement or the TxDOT Tolling Services Agreement, Developer may charge, for example, trip tolls equal to the sum of all applicable Toll Segment Tolls within a completed entry to and exit from the Managed Lanes.

**D. Schedule Mode**

The requirements set forth in this Section D shall apply while in Schedule Mode.

1. Not later than 180 days before the first Service Commencement Date, Developer shall prepare and submit to TxDOT for review and comment a schedule showing the Base Toll for each Toll Segment and direction for each hour of the week during non-Peak Periods and for each half hour of the week during Peak Periods in the format set forth in Table D-1 below (the "Base Toll Schedule"), any temporary discounts in accordance with Section C.4, a schedule of initial Toll Segment Lengths in accordance with Section F.6, a schedule of initial Toll Factors in accordance with Section F.2, a schedule of Video Transaction Toll Premiums in accordance with Section H (if applicable) and a schedule of Incidental Charges in accordance with Section I.

**Table D-1  
Sample Toll Segment Base Toll Schedule Windows**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
6:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
7:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
7:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
8:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
8:30 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
9:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
10:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
11:00 AM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
12:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
1:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX
2:00 PM	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX	\$X.XX

3:00 PM	\$X.XX						
3:30 PM	\$X.XX						
4:00 PM	\$X.XX						
4:30 PM	\$X.XX						
5:00 PM	\$X.XX						
5:30 PM	\$X.XX						
6:00 PM	\$X.XX						
6:30 PM	\$X.XX						
7:00 PM	\$X.XX						
8:00 PM	\$X.XX						
9:00 PM	\$X.XX						
10:00 PM	\$X.XX						
11:00 PM	\$X.XX						
12:00 AM	\$X.XX						
1:00 AM	\$X.XX						
2:00 AM	\$X.XX						
3:00 AM	\$X.XX						
4:00 AM	\$X.XX						
5:00 AM	\$X.XX						

**OCCUPANCY**

= Peak Periods  
 = Non-Peak Periods

2. Not later than 120 days before the first Service Commencement Date, Developer shall publish the initial Base Toll Schedule, temporary discounts (if any), schedule of initial Toll Segment Lengths, schedule of initial Toll Factors, schedule of Video Transaction Toll Premiums and schedule of Incidental Charges as follows:
  - a. Developer shall publish such information in two English-language newspapers and one Spanish-language newspaper having general circulation in the vicinity of the Project and on an Internet website for general public viewing (i.e., non-passcode).
  - b. Developer shall publish a second notice not later than 10 days before the first Service Commencement Date in the same newspapers and website.
  
3. Subject to Section F.4, during Schedule Mode, if Developer desires to implement any change to the Base Toll Schedule, at least seven days prior to the effective date of any change Developer shall provide TxDOT with a written revised Base Toll Schedule and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b.

**E. Dynamic Mode**

The requirements set forth in this Section E shall apply while in Dynamic Mode. In addition, Developer may elect to continue publishing any tolling information including the Base Toll Schedule while in Dynamic Mode.

Developer shall maintain indicative averages (which may include historical or other relevant information) for a minimum of the previous 180 days (or such lesser period if less than 180 days of Dynamic Mode have elapsed), broken out by Toll Segment and direction during a

minimum of every hour during non-Peak Periods and every half hour during Peak Periods, of Base Tolls on the Managed Lanes or as otherwise approved by TxDOT, and the applicable Toll Segment Lengths, Toll Factors and Video Transaction Toll Premiums. Developer shall make this information available, to any member of the public, on an Internet website, through a telephonic request and upon request at Developer's offices during reasonable business hours, by facsimile copy without charge or by mailing a copy if the written request is accompanied by a self-addressed stamped envelope.

**F. Toll Calculation**

1. Toll Segment Toll

"Toll Segment Toll" with respect to a Toll Segment means the product of the Base Toll multiplied by the Toll Factor, rounded to the nearest five cents (\$0.05).

2. Toll Factor

- a. Developer shall determine the toll factor for each User Classification (the "Toll Factor"). Each Toll Factor shall not exceed the applicable Maximum Toll Factor as shown in Table F-1. Any proposed change by Developer to Table F-1 shall constitute a proposed change in User Classification subject to the provisions of Section 3.4 of the Agreement.

**Table F-1  
Size/Occupancy-Based Classification**

User Classification	Maximum Toll Factor
Exempt Vehicles	0.0
HOV and Motorcycles for valid transponder account holders that self-declare (or are otherwise identified) as HOVs or Motorcycles during Peak Periods during the HOV Discount Period	Discount Factor
SOV (and HOV and Motorcycles other than above)	1.0
Automobiles with one trailer	2.0
Large trucks	3.0
Large trucks with one trailer	4.0
Large trucks with more than one trailer	5.0

- b. Subject to Section F.2.a, if Developer desires to change the Toll Factors, at least 15 days prior to the effective date of any change Developer shall provide TxDOT with a written revised schedule of Toll Factors and shall publish such schedule in the same manner (without reference to the time periods) as set forth in Sections D.2.a and D.2.b.

### 3. Base Toll

The "Base Toll" for each Toll Segment is defined as the Base Toll Rate multiplied by the Toll Segment Length.

### 4. Base Toll Rates

- a. Subject to Section F.5, Developer shall set the toll rates for each Toll Segment and direction (the "Base Toll Rates").
- b. Subject to Section F.5, during Schedule Mode, Developer shall have the right to change the Base Toll Rates at any time, but not more frequently than once every month.
- c. Subject to Section F.5, during Dynamic Mode, Developer shall have the right to change the Base Toll Rates at any time, but not more frequently than once every 5 minutes.

### 5. Base Toll Rate Cap

- a. The "Base Toll Rate Cap" shall initially be \$0.75 per mile per Toll Segment per direction and shall be adjusted every year, beginning January 1, 2010, by a percentage equal to the percentage increase in the CPI between the CPI for the second to last December before the date of the increase and the CPI for the last December before the date of the increase.
- b. Notwithstanding anything herein to the contrary, during the initial 180 days after the first Service Commencement Date, the toll rate may not exceed \$0.75 per mile traveled, regardless of traffic conditions, except with TxDOT's prior written approval in TxDOT's sole discretion.
- c. After the initial 180 days after the first Service Commencement Date, subject to the requirement that Developer may not change the Base Toll Rate more frequently than once every five minutes, the Base Toll Rates may exceed the Base Toll Rate Cap only if Developer complies with the following provisions:
  - i. If each of the highest five of the ten previous Average Volumes in a Toll Segment is more than 3300 pce/h on 2 lane facilities or more than 5100 pce/h on 3 lane facilities, or if each of the lowest five of the ten previous Average Speeds in a Toll Segment is lower than 50 mph, then the Base Toll Rate in such Toll Segment shall immediately (subject to the requirement that Developer may not change the Base Toll Rate more frequently than once every five minutes) be increased by multiplying the then-existing Base Toll Rate by a Demand Factor between 1.0 and 1.25.

- ii. If each of the highest five of the ten previous Average Volumes in a Toll Segment is between 2500 and 3300 pce/h on 2 lane facilities or between 4000 and 5100 pce/h on 3 lane facilities, and if each of the lowest five of the ten previous Average Speeds in a Toll Segment is above 50 mph, then the Base Toll Rate in such Toll Segment shall not be changed.
- iii. If each of the lowest five of the ten previous Average Volumes in a Toll Segment is less than 2500 pce/h on 2 lane facilities or less than 4000 pce/h on 3 lane facilities, and if each of the lowest five of the ten previous Average Speeds in a Toll Segment is above 50 mph, then the Base Toll Rate in such Toll Segment shall immediately (subject to the requirement that Developer may not change the Base Toll Rate more frequently than once every five minutes) be reduced by multiplying the then-existing Base Toll Rate by a Demand Factor between 0.75 and 1.0.
- iv. The "Demand Factor" for a Toll Segment is calculated by subtracting or adding the underlined amount that corresponds to the applicable change in passenger car equivalents per hour per lane in clauses (1) through (5) below or by subtracting or adding the underlined amount that corresponds to Average Speeds being less than 50 mph in clause (6) below to an initial factor of 1.0 (to the extent clause (6) applies and any of clauses (1) through (5) also applies, clause (6) shall take precedence):
  - 1. equal to or greater than 0 and less than 50 pce/h/l – 0.05
  - 2. equal to or greater than 50 and less than 100 pce/h/l – 0.10
  - 3. equal to or greater than 100 and less than 150 pce/h/l – 0.15
  - 4. equal to or greater than 150 and less than 200 pce/h/l – 0.20
  - 5. equal to or greater than 200 pce/h/l – 0.25
  - 6. each of the lowest five of the ten previous Average Speeds is less than 50 mph – 0.00 - 0.25 (as determined by Developer).

## 6. Toll Segment Length

- a. Developer may elect to charge a User who travels less than the complete length of a Toll Segment a reduced toll based on the actual portion of the Toll Segment traveled or a toll based on the complete length of the Toll Segment. The "Toll Segment Length" means either the complete length of a Toll Segment or the actual portion of a Toll Segment traveled, based on Developer's election.
- b. Subject to Section F.6.a, if Developer desires to change its methodology of calculating the Toll Segment Length or upon a change in any Toll Segment Length under Section B.1, at least 15 days prior to the effective date of any change Developer shall provide TxDOT with a written revised schedule of Toll Segment Lengths and shall publish such schedule in the same manner (without reference to the time periods) as set forth in Sections D.2.a and D.2.b.

## G. Performance and Measurement Requirements

1. At all times after the Service Commencement Date for each Toll Segment:
  - a. Developer shall measure the speed of every vehicle for each Managed Lane of the Toll Segment at points no greater than half-mile spacing ("Vehicle Speed"), and shall calculate the average Vehicle Speed for each 60-second period per direction for each Toll Segment ("Average Speeds"). Developer shall calculate the average of the Average Speeds for every consecutive 15-minute period for each Toll Segment per direction, beginning at the top of the hour. Developer shall record every vehicle for each Managed Lane of the Toll Segment at points no greater than half-mile spacing ("Vehicle Volume"), and shall calculate the average Vehicle Volume for each 60-second period per direction for each Toll Segment ("Average Volumes").
  - b. Developer shall deliver weekly reports to TxDOT and Independent Engineer summarizing:
    - i. The Average Speeds during all time periods where the Average Speed for each Toll Segment (as it may be amended under Section G.1.a) was below 50 mph (e.g., Tuesday, 10:14 a.m. to 10:40 a.m. – Toll Segment 2 – Avg. 48 mph);
    - ii. The reason any Average Speeds were below 50 mph (e.g., Incident in Managed Lanes – Stalled Car); and
    - iii. Any corrective action taken to raise Average Speeds (e.g., responded to incident and instituted lane recovery procedures within response parameters).
  - c. Developer shall deliver monthly reports to TxDOT and Independent Engineer that describe the elements listed below. The report shall be in electronic format and shall include all of the raw data listed below in a format that can readily be reviewed for compliance with the CDA Documents.
    - i. Vehicle Speed and Vehicle Volume for each Managed Lane per direction in each Toll Segment;
    - ii. Average Speeds and Average Volumes (pce/h), per direction, for each Toll Segment;
    - iii. Average of the Average Speeds, per direction, for each Toll Segment;
    - iv. Tolling data including User Classification, Base Toll, Toll Segment Length, Base Toll Rates, Toll Segment Toll and temporary discounts (if any) for each tolling point in each Toll Segment;
    - v. for each valid transponder account holder that self-declares (or is otherwise identified) as an HOV or Motorcycle during Peak Periods during the HOV Discount Period, the date, time and amount of the undiscounted toll and a unique transaction identifier; and
    - vi. the total HOV discount for the month that is potentially eligible for reimbursement to Developer.

- d. Developer shall retain all raw and reduced data for a minimum of five years to facilitate periodic auditing purposes. Outdated material shall be disposed of no earlier than December 31 of the year where there is a complete and full record of the preceding five years worth of data.
  - e. TxDOT shall have the right (but not the obligation) to perform or have performed activities to enforce the valid use of the HOV self-declaration lanes and to validate the entitlement of Users to the HOV discount, including by providing policing services or other means. Developer shall provide assistance to TxDOT in accordance with Section 21.3.2.5 of the Technical Provisions.
2. Commencing 181 days after the first Service Commencement Date, Developer shall monitor Average Volumes and Average Speeds in the Managed Lanes per direction for each Toll Segment for compliance when the Base Toll Rate exceeds the Base Toll Rate Cap as follows:
- a. Developer shall deliver a weekly report to TxDOT and Independent Engineer for the Toll Segment:
    - i. Summarizing any and all time periods where the speeds were above 50 mph, the Base Toll Rate was at or above the Base Toll Rate Cap and the Average Volume thresholds were exceeded;
    - ii. Summarizing Average Volumes in passenger car equivalents per hour per lane 10 minutes prior to, during and 10 minutes after implementation of a Base Toll Rate above the Base Toll Rate Cap;
    - iii. Documenting that the Base Toll Rate Cap was exceeded because Average Volumes increased or Average Speeds decreased in accordance with Section F.5.c; and
    - iv. Documenting that the Base Toll Rate was reduced to values below the Base Toll Rate Cap as Average Volumes decreased or Average Speeds increased.
  - b. For each Toll Segment that operated above the Base Toll Rate Cap, Developer shall provide a monthly report to TxDOT summarizing the time of each occurrence, the duration, reasons for exceeding and mitigation measures taken to increase Average Speed and reduce Average Volumes. The report shall be in electronic format and shall include all of the raw data listed below in a format that can be readily be reviewed for compliance with the CDA Documents.
    - i. Average Speed and Average Volumes (pce/h) per direction in each Toll Segment operating above the Base Toll Rate Cap.
    - ii. Toll data including User Classification, Base Toll, Toll Segment Length, Base Toll Rates, Demand Factor, Toll Segment Toll and temporary discounts (if any) for each tolling point in each Toll Segment operating above the Base Toll Rate Cap.
    - iii. Documentation that the Base Toll Rate was reduced to values below the Base Toll Rate Cap as Average Volumes decreased or Average Speed increased.

3. Commencing 270 days after the first Service Commencement Date and commencing 60 days after each subsequent Service Commencement Date (if later), subject to Sections G.4 and G.5, Developer shall maintain Average Speeds in the Managed Lanes of the Toll Segment at or above 50 mph.
4. Developer shall be excused from its obligation to maintain Average Speeds in the Managed Lanes of a Toll Segment at or above 50 mph only if such failure is caused by events that are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval of any of the Developer-Related Entities, upon providing to TxDOT adequate written evidence thereof. Examples of events that are beyond Developer's control include:
  - a. An Incident (beyond the control of any Developer-Related Entity) within the Managed Lanes or General Purpose Lanes that is responded to by Developer and measures instituted by Developer to clear the Incident and return lane availability as required under the CDA Documents and the Incident Management Plan. Documentation of corrective action include ITS still photos and video with time stamps, Courtesy Patrol/Motorist Assistance or Operations Manager records, auditable data records provided from automated ITS dispatch records.
  - b. An Incident (beyond the control of any Developer-Related Entity) within the Managed Lanes or General Purpose Lanes that is responded to by authorized emergency vehicles, as defined in Section 541.201 of the Code. Documentation of corrective action include Official Police Reports showing dates and times dispatched, time arrived, time cleared.
  - c. Incidents or recurring congestion (beyond the control of any Developer-Related Entity) adjacent to the Managed Lanes. Documentation of corrective action include ITS still photos and video with time/date stamps.
  - d. Severe/Inclement weather. Documentation of corrective action include but are not limited to ITS still photos and video with time/date stamps, Weather Radar Snapshots with time/date stamps, vehicle volumes, etc.
  - e. TxDOT suspends tolling under Section 3.6 of the Agreement.
  - f. Developer is in strict compliance with Section F.5.c.
5. If at any time the posted speed limit on any portion of the Managed Lanes is less than 60 mph, then (a) the Average Speeds requirement under Sections G.3 and G.4 for such portion of the Managed Lanes shall be reduced to the posted speed limit minus 10 mph and (b) the corresponding Noncompliance Point thresholds under Attachment 1 of Exhibit 21 to the Agreement will each be reduced by the amount of the reduction to the Average Speeds.

## H. Video Transaction Toll Premiums

1. This Section H shall not apply during any period in which (a) the NTTA Tolling Services Agreement is in effect and NTTA is performing the tolling services thereunder or (b) the TxDOT Tolling Services Agreement is in effect.

2. In addition to the right to charge Toll Segment Tolls, Developer shall have the right, except as provided in this Section H, to charge amounts, with respect to Video Transactions, reasonably necessary for Developer to recover (a) its reasonable out-of-pocket and documented costs and expenses and (b) a reasonable and documented amount to reflect the same collection risk assumed by NTTA in the NTTA Tolling Services Agreement, but no other risk.
3. Subject to Section H.2, if Developer desires to implement such Video Transaction Toll Premiums, or change the Video Transaction Toll Premiums, at least 15 days prior to the effective date of any implementation or change, Developer shall provide TxDOT with a study establishing that such rate meets, and does not exceed, the requirements of Section H.2. TxDOT shall have the opportunity to review and provide comment on such rate prior to any implementation or change. Developer shall also provide a written revised schedule of Video Transaction Toll Premiums and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b.
4. Video Transaction Toll Premiums shall not apply to each of the following circumstances:
  - a. Usage by Exempt Vehicles;
  - b. Usage by vehicles during any time that TxDOT is liable to pay tolls pursuant to Section 3.6.3 of the Agreement; and
  - c. Any Transponder Transaction is rejected due to insufficient funds in the customer's account, unless Developer resubmits, or (if applicable) causes the Transponder Issuer to resubmit, the Transaction for settlement once per day after the Transaction is transmitted for processing and the account remains insufficient to pay the full toll charge each time of resubmission through the date for mailing a Video Transaction billing statement to the customer on account of the rejected Transponder Transaction. Developer shall determine the date for mailing a Video Transaction billing statement, provided it shall be consistent with Section I.1.
5. During the Operating Period after the Service Commencement Date, Developer shall seek to regularly receive from its Contractor (other than NTTA or TxDOT) performing back office toll collection and enforcement services (the "tolling services Contractor") (or to compile if Developer performs back office tolling services itself), in accordance with TxDOT's interoperability protocols, consolidated master lists of good or valid transponders of Transponder Issuers. Before Developer transmits a Transaction to a CSC Host, Developer shall compare the transponder, if any, to the most recently updated version of the consolidated master list. If the transponder is listed, Developer shall transmit the Transaction to the CSC Host as a Transponder Transaction. If the transponder is not so listed, Developer shall transmit the Transaction, including the transponder information, to the CSC Host as a potential Video Transaction. At the initiation of its processing, Developer shall, or shall require its tolling services Contractor (other than NTTA or TxDOT) to, compare the license plate information to transponder accounts of the Transponder Issuers to determine whether there is an inactive, suspended or unlisted account due to balances below required low balance thresholds. If so, then the Transaction shall initially be treated as a Transponder Transaction, subject to reclassification as a Video Transaction, as more particularly set forth in Section H.4.c.

6. Developer shall have the right to treat as Video Transactions, and (except as provided otherwise in this Section H) to charge and collect, in addition to Toll Segment Tolls, the Video Transaction Toll Premium for, Transactions that normally would constitute Transponder Transactions in the following circumstances and subject to the following terms and conditions:
- a. The Transponder Issuer for the Transponder Transactions must be a Person other than Developer or its Affiliates, and other than the tolling services Contractor (which may include TxDOT).
  - b. The Transponder Issuer and Developer must not have a legally enforceable agreement in effect (whether direct or via designated third party beneficiary rights) providing rights, obligations and remedies regarding financial interoperability and funds transfer.
  - c. The Transponder Issuer must have chronically failed to remit to Developer (or its tolling services Contractor) payments for Transponder Transactions on the Project within the applicable time period provided to the Transponder Issuer under its interoperability protocols, agreements and arrangements with TxDOT or Developer's tolling services Contractor. For this purpose, "chronically fails" means and is limited to (i) if the Transponder Issuer is obligated to make batched remittances at a frequency no greater than five Business Days, then five consecutive failures, or eight failures in any 20 consecutive cycles, (ii) if the Transponder Issuer is obligated to make batched remittances at a frequency greater than five Business Days but no greater than 15 Days, then three consecutive failures, or five failures in any 15 consecutive cycles, and (iii) if the Transponder Issuer is obligated to make batched remittances at a frequency greater than 15 Days, two consecutive failures or three failures in any six consecutive cycles. However, there shall be excluded from such measures of chronic failure any failure, up to a maximum time period of 30 days per incident, of a Transponder Issuer to make remittances due to computer system malfunctions or downtime beyond the Transponder Issuer's reasonable control, or due to damage or destruction of such computer system or the facilities in which they are located or operated.
  - d. Developer, rather than its tolling services Contractor (if any), must bear the risk of the Transponder Issuer's failure to remit payments.
  - e. Developer must deliver to the Transponder Issuer written notice (i) of the provisions of this Section H.6, (ii) that chronic failure to remit payments has occurred and (iii) that Developer intends to cease recognizing Transponder Transactions by the Transponder Issuer's customers if the Transponder Issuer does not rectify the chronic failure and provide to Developer reasonable assurance, as described in Section H.6.i, of future timely payments within ten Business Days after the date of notice.
  - f. If the Transponder Issuer fails to rectify and provide reasonable assurance within such time period, Developer must post notice on the Project website and in a newspaper of broad, general circulation in the Project area announcing to the public that transponders issued by the Transponder Issuer will cease to be recognized on the Project and customers holding such transponders will be subject to Video

Transaction Toll Premiums from and after a date stated in the notice. Such date shall be no earlier than seven days after the date the notice is posted.

- g. If the conditions in clauses a. through f. above are satisfied, then with respect to prior Transponder Transactions remaining unpaid by the Transponder Issuer after lapse of such time period, Developer may elect to (i) seek recovery from the Transponder Issuer to the extent available under applicable Law and/or (ii) seek to collect directly from the subject Users the Transponder Transaction tolls and treat the same as Video Transactions, except no Video Transaction Toll Premium may be charged. If the User shows that he or she previously paid the subject tolls via debit to its customer account, Developer shall cease efforts to collect the subject tolls from the User. If the date Developer receives a duplicate payment is after the date a debit is made to the User's customer account for the same toll, Developer shall refund the overcharge to the User.
- h. If the conditions in subsections a. through f. above are satisfied, then in order to process future subject Transactions as Video Transactions and charge Video Transaction Toll Premiums, Developer may not seek to process or collect such Video Transactions through electronic debiting of the customer's account with the Transponder Issuer. If Developer does seek to process or collect through electronic debiting of the customer's account with the Transponder Issuer, then the Transaction shall be treated as a Transponder Transaction or Video Transaction, as the case may be, in accordance with the Agreement and without regard to this Section H.6.
- i. Developer shall cease to process Transactions by the Transponder Issuer's customers as Video Transactions, and shall again treat them as Transponder Transactions, at such time, if any, that (i) the Transponder Issuer remits to Developer or its tolling services Contractor in full all tolls due but unpaid for prior Transponder Transactions transmitted to it for payment, and (ii) provides to Developer reasonable assurance of future timely payments. Developer shall have the right to require, as such reasonable assurance, a direct agreement with the Transponder Issuer providing rights, obligations and remedies regarding financial interoperability and funds transfer on commercial terms and conditions comparable to those enjoyed by other Transponder Issuers having agreements or memoranda of understanding with the Transponder Issuer, and reasonable security.

## **I. Incidental Charges**

1. Developer will have the right to charge reasonable Incidental Charges to its customers to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to the items, services and work for which they are levied, subject to the following:
  - a. If Developer issues a paper statement to a customer utilizing a transponder issued by Developer, a paper statement fee may be levied to capture the cost of providing a paper summary by mail of (i) transponder account activity and (ii) Video Transaction charges. The paper statement fee shall be \$1.50 and shall increase every two years, beginning January 1, 2008, by a percentage equal to the percentage increase in the CPI between the CPI for the third to last December before the date of increase and the CPI for the last December before the date of increase; provided that if Developer retains a public agency to provide back office tolling services, paper

statement fees for paper summaries requested by the agency's transponder account customers may be at the standard rate customarily charged by the public agency from time to time. If the summary is provided in electronic form only, no paper statement fee shall be levied. Developer shall not charge a Video Transaction User more than one paper statement fee per month unless the Video Transaction User specifically requests more frequent paper statements;

- b. A charge may be levied for a new transponder issued by Developer or its Affiliate that will reflect the cost to Developer of acquiring the equipment. If Developer retains a public agency to provide back office tolling services including transponder issuance by the public agency, such charges may equal the standard general rates the public agency charges from time to time for its account holders respecting toll facilities operated by the public agency; and
  - c. A fee may be levied for toll violation processing that will reflect the overall cost to Developer of violation processing. This fee is in addition to lawful penalties for toll violations. If Developer retains a public agency to provide back office toll violation processing and enforcement services, such fees may equal the standard rates the public agency customarily charges from time to time regarding toll violations on its own facilities, provided the same are in accordance with Law applicable to the agency. Where NTTA or TxDOT is the tolling service provider, a Transaction shall be classified as a violation or subject to a violation notice, collection agency action or court proceedings as provided in the NTTA Tolling Services Agreement or TxDOT Tolling Services Agreement, as applicable, and as is consistent with NTTA's or TxDOT's practices regarding customers of its own facilities. With regard to all other tolling service providers, no Transaction shall be classified as a violation or subject to a violation notice, collection agency action or court proceedings unless and until (a) Developer has first delivered to the User a paper billing statement providing 30 days to pay and a second past due paper billing statement providing an additional 30 days to pay, and (b) Developer has provided a 15-day waiting period after the second 30-day period elapses. Developer shall include in each second past due paper billing statement for the same Video Transaction and each violation notice a notice that the User will owe further fees, penalties and costs if payment is not made. The second past due paper billing statement must satisfy the notice required under Section 228.055 of the Code. No paper statement fee shall be charged for any violation notice.
2. Subject to Section I.1, if Developer desires to implement any change to the Incidental Charges, at least 15 days prior to the effective date of any change, Developer shall provide TxDOT with a written revised schedule of Incidental Charges and shall publish such schedule in the same manner as set forth in Sections D.2.a and D.2.b.

## J. Definitions

**Discount Factor** – 0.5 or any other factor between 0 and 1 as determined by TxDOT in TxDOT's sole discretion.

**Dynamic Mode** – A pricing methodology commencing after 180 days after the first Service Commencement Date whereby the Base Toll Rate may change no more frequently than once every five minutes and that follows all the other requirements pertaining to Dynamic Mode set forth in this Exhibit 4.

**Passenger Car Equivalent (pce)** – As calculated in the most current version of the TRB Highway Capacity manual in order to account for the effects of buses and trucks on operations (if necessary) calculated on a per minute basis, as appropriate.

**Schedule Mode** – A pricing methodology commencing on the first Service Commencement Date whereby the Base Toll Rate may change no more frequently than once every month and that follows all the other requirements pertaining to Schedule Mode set forth in this Exhibit 4.

**Transaction** – A transponder or video/OCR read at a predetermined gantry location, this includes manual verification of video/OCR reads as well.

**EXHIBIT 5**  
**PROJECT PLAN OF FINANCE**

[Attached]

## B. FINANCING PLAN

### Overview of Financing Plan

In formulating the Financing Plan, the Consortium has exhaustively assessed the financial solutions that are available in the current market. The Consortium proposes a plan that includes a combination of funding sources which optimize the cost of capital of the Project and thereby maximize the value offered to the Texas Department of Transportation ("TxDOT") under the Consortium's proposal. As detailed hereafter, the proposal includes the use of available long-term instruments such as a TIFIA loan from the United States Department of Transportation and Private Activity Bonds that provide a long-term, balanced financing solution in conjunction with senior bank facilities. The Financing Plan also includes a significant equity contribution aimed at limiting the usage of public funds.

Table B.1 below sets out the sources and uses of funds at the end of the construction period under the Financing Plan:

**Table B.1: Sources and Uses of Funds under the Financing Plan**

	Sources of Funds (\$ million)		Uses of Funds (\$ million)
Toll Revenue	35	Design-build agreement ("DB Agreement") price	2,110
Senior Term Facility	395	Intelligent Transportation System ("ITS") and Toll Collection System ("TCS") budget	56
Private Activity Bonds ("PABs")	395	Operating costs ("Operating Costs") and maintenance capital expenditure	109
TIFIA Loan	790	Transaction costs	35
Equity Contribution	683	Interest / (Interest income)	239
Public Funds	445	Debt fees	40
		Cash reserves funding	125
		TIFIA subsidy cost	29
<b>Total</b>	<b>2,743</b>	<b>Total</b>	<b>2,743</b>

The senior Term Facility and PABs each comprise 50% of the proposed senior debt financing package. In this way, the Financing Plan takes advantage of the lending capacity that is expected to exist for the Project in each of the commercial bank and tax-exempt bond markets. Spreading the funding requirement between these financing markets will limit the demand on each market, which is expected to result in optimal pricing of the instruments.

The senior bank facilities include a maintenance capex facility. By debt financing maintenance capital expenditures, the Financing Plan capitalizes upon the increasing debt capacity of the Project over time.

The TIFIA Loan represents the most affordable source of capital available to the Project, both because of its low interest rate and the flexibility it provides to defer the payment of all interest during the first five years of operations. The Financing Plan therefore maximizes the amount of the TIFIA Loan within the limits of the conditional commitment provided by the USDOT ("TIFIA Conditional Term Sheet").

In addition to this, if TxDOT decides to proceed with the construction of the IH 35E Capacity Improvement Section, the Financing Plan will be the same except for the inclusion of an IH 35E Capacity Improvement Bridge Facility raised to provide temporary funding of the construction and funding costs associated with the IH 35E Capacity Improvement Section and fully amortized when the additional requested public funds are received.

Table B.2 below sets out the sources and uses of funds at the end of the construction period under the NTP3 Financing Plan:

**Table B.2: Sources and Uses of Funds under the NTP3 Financing Plan**

(\$ in millions)	Sources of Funds		Uses of Funds
Toll Revenue	35	Design-build agreement ("DB Agreement") price	2,189
Senior Term Facility	395	Intelligent Transportation System ("ITS") and Toll Collection System ("TCS") budget	56
Private Activity Bonds ("PABs")	395	Operating costs ("Operating Costs") and maintenance capital expenditure	109
TIFIA Loan	790	Transaction costs	35
Equity Contribution	681	Interest / (Interest income)	251
Public Funds	635	Debt fees	43
		Cash reserves funding	125
		TIFIA subsidy cost	29
		Cash flow during construction	95
<b>Total</b>	<b>2,932</b>	<b>Total</b>	<b>2,932</b>

The financial structure's significant resilience to unexpected cash flow impacting events is supported by:

- Significant reserves providing liquidity to the structure;
- The negotiated terms of the TIFIA Loan, including the ability to defer 75% to 100% of scheduled TIFIA Loan debt service for up to 25 years of operations, in the event of cash flow shortfalls.

The robustness of the Consortium's Financing Plan is further demonstrated by:

- the significant equity commitment which has been provided by the Sponsors;
- the extensive discussions that the Consortium has undertaken with the USDOT over the course of several months, resulting in fully negotiated, detailed terms for the TIFIA Loan;
- the indicative investment grade rating which has been assigned to the Consortium's financing plan by Moody's Investor Services ("Moody's");
- the opinion letter from the Consortium's financial advisor; and
- the support letters from potential financiers which have been provided to the Consortium for the purposes of this proposal.

The Financing Plan recognizes current market conditions and takes advantage of the flexibility to defer financial close for up to 18 months after commercial close. In this way, the Consortium has been able to incorporate in its proposal the more advantageous senior debt terms that it believes will be available in the period between selection as preferred bidder and financial close. As such, the Consortium has decided to base its proposal upon an uncommitted senior debt financing.

While senior bank facilities, PABs, a TIFIA Loan, equity, and public funds will comprise the Consortium's primary Financing Plan, the Consortium will (as permitted in Exhibit C, Section 5.8 of the Instructions to Proposers ("ITP")) evaluate additional financing sources to the extent they improve the overall economics of the project. These sources may include (but are not limited to): taxable bonds, mezzanine debt, bank bonds, loan notes and shareholder loans.

This flexibility has allowed the Consortium to maximize the value it offers to TxDOT under this Proposal.

## B.1 Identity of Financial Institution

Below are the names and addresses of the financial institutions that will issue the Payment and Performance Letter of Credit required under the CDA. Rating information is set out in Table B.3 below:

Each of these banks has a credit rating of "A" or better.

**Table B.3: Letter of Credit Financial Institutions Ratings Information**

Financial Institution	Rating	Address	Contract / Phone
Banco Español de Crédito	AA	Avda. Gran Vía de Hortaleza 3 28043 Madrid, Spain	Alfonsó Agulló Tel.: 34.91.410.46.76
Banco Bilbao Vizcaya	AA-	Alcalá, 16 28014 Madrid, Spain	Beatriz Anoro Tel.: 34.91.537.65.78
Caja de Madrid	AA-	Pº Castellana, 189 28046 Madrid, Spain	Andrés Arahetes Tel.: 34.91.423.99.32
Banco Sabadell	A+	Principe de Vergara, 125 28002 Madrid, Spain	Angeles Fósar Tel.: 34.91.321.72.02

The letter of credit will be issued through a local bank with an office in Austin, Dallas, Houston or San Antonio at which such Payment and Performance Letter of Credit can be presented for payment.

A statement certified by the chief financial officers of the Sponsors that the Sponsors will be able to obtain the required letter of credit is provided in Volume 1, Attachments to B, C, D, E, & F, Attachments 1 of this Financial Proposal.

## B.2 Range of Financing Sources

The Consortium proposes a Financing Plan that includes the following sources of debt, equity and public funds financing as found in Table B.4:

**Table B.4: Summary of Funding Sources for the Project**

Funding Source	Amount (USD million)	Description
Equity Contribution	683	Subscription for share capital by the Sponsors
Senior bank facilities	410	Senior bank facilities include:

Funding Source	Amount (USD million)	Description
		<ul style="list-style-type: none"> <li>• <b>\$395 million Term Facility</b> to fund all project costs during the construction period</li> <li>• <b>\$15 million Maintenance Capex Facility</b> to meet the maintenance capital expenditure requirements of the Project for the first ten years of the concession</li> </ul>
PABs	395	An issuance of tax exempt bonds to fund qualified highway expenditures
TIFIA Loan	790	Direct loan from the USDOT under the TIFIA Act to fund eligible project costs
Public Funds	445	Public funds amount to be paid to Developer by TxDOT under Part E of Exhibit 7 to the CDA

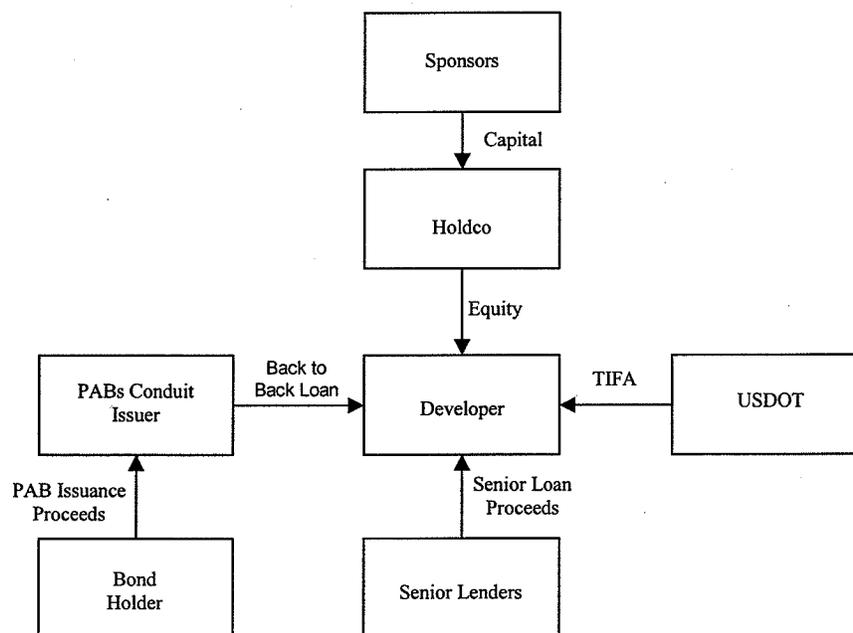
In addition to the funding sources described above, if TxDOT elects to proceed with the construction of the IH 35E Capacity Improvement Section, the Financing Plan will include the additional sources of funding described in Table B.5 below:

**Table B.5: Summary of Additional Funding Sources for IH 35E Capacity Improvement Section**

Funding Source	Amount (USD million)	Description
IH 35E Capacity Improvement Bridge Facility	80 (excluding capitalized interest)	A bridge debt facility arranged to provide temporary funding of the construction and funding costs associated with the IH 35E Capacity Improvement Section until Capacity Improvement Funds are available
Capacity Improvement Funds Request	190	Public funds amount to be paid to Developer by TxDOT under Part E of Exhibit 7 to the CDA in respect of the IH 35E Capacity Improvement Section

Figure B.1 below is a simplified structure diagram representing the Financing Plan.

**Figure B.1: Simplified Financing Plan Structure Diagram**



## **B.2.2 Identity of the Investors**

The two equity investors for the Project are Cintra and Meridiam. Further detail on the Sponsors is provided in Section B.4.

## **B.2.3 Identity of [Mandated] Lead Arrangers [Managers, Underwriting Banks] and/or Quasi-Equity Providers**

The strategy adopted with regard to financing this project has focused on maximizing competitive tension across all levels of debt structuring and procurement. For that reason, the Consortium has engaged in extensive discussions with a number of active underwriters of debt financing for toll roads assets in the US market, and has provided the following due diligence materials to these potential financiers:

- A financial model;
- Traffic and revenue report prepared by Arup North America Ltd (“Arup”);
- Review of the traffic and revenue forecast on behalf of lenders by Hatch Mott MacDonald (“Hatch Mott”);
- Comprehensive Development Agreement (“CDA”);
- Draft Design Build Agreement; and
- Draft TIFIA Conditional Term Sheet.

The Consortium has received support letters in relation to the Financing Plan (Volume 1, Attachments to B, C, D, E, & F, Attachment 2) from the following parties:

- National Australia Bank Limited (“NAB”);
- RBC Capital Markets (“RBC”);
- Barclays Capital (“Barclays”); and
- Calyon Crédit Agricole CIB (“Calyon”).

We note that in addition to being experienced underwriters of bank debt, RBC and Barclays are active participants in the tax exempt bond underwriting market.

The conditional commitment for the TIFIA Loan is provided by the USDOT, comprising a letter and a term sheet (“TIFIA Conditional Term Sheet”). This can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 5 of this Proposal.

## **B.2.4 Proposed Steps and Timeframes for Reaching Financial Close**

Figure B.2 below provides a summary of the steps to financial close. Please refer to Section B.6 for a more detailed outline of steps and timeframes to financial close.

**Figure B.2: Summary of Steps to Financial Close**

Deliverable	2009			Months to Financial Close (2009-2010)								
	Feb	Mar	Apr	9	8	7	6	5	4	3	2	1
DB Agreement Signed												
Due Diligence Process												
Retention of Counsel												
Underwriting/Issuance Process												
Selection of Underwriters and FAs												
Rating Agency Review and Rating												
Finalize Fed Agreements												
TxDOT Financial Commitment												
Bond Pricing / Lender Term Sheets												
Credit Committee Approvals												
Securities Marketing & Issuance:												
Financial Close												

The above described schedule is consistent with the Financing Plan assumption of achieving financial close 18 months after signing the CDA. However, the Consortium will try to accelerate execution as much as possible depending on financial market conditions.

**B.2.5 IH 35E Capacity Improvement Section**

The Financing Plan assumes that the costs of the IH 35E Capacity Improvement Section will be financed via a public funds request ("Capacity Improvement Funds"). According to Exhibit 7, Part E of the CDA, the Capacity Improvement Funds will not be available until six months after service commencement of the project segment pertaining to the IH 35E Capacity Improvement section. Therefore it is assumed that a bridge debt facility is arranged to provide temporary funding of the construction costs. It is assumed that:

- Financial close on the bridge debt facility occurs on October 31, 2011;
- Construction of the IH 35E Capacity Improvement Section commences on November 18, 2011;
- Construction of the IH 35E Capacity Improvement Section is completed on April 18, 2015; and
- The bridge debt facility is repaid in full on February 29, 2016.

It is assumed that interest and fees on the bridge debt facility will capitalize during the construction period. Fees and pricing assumed in relation to the bridge debt financing facility included in the Financing Plan are as follows in Table B.6.

**Table B.6: Summary Bridge Facility Terms**

Key Details	Bridge Facility
Upfront Fee	150bps
Commitment Fee	40% of margin

<b>Base Rate</b>	350 bps
<b>Drawn Margin</b>	150 bps
<b>Ticking Fee</b>	40% of margin for 3 months prior to financial close

## **B.3 Details for Lenders and Lender Support Letters for Uncommitted Financing**

### **B.3.1 Senior Bank Facilities**

The Financing Plan includes two senior bank facilities: a term facility with an available balance of \$395 million and a maintenance capex facility with an available balance of \$15 million. The terms presented reflect extensive discussions with active underwriters of debt financing for toll roads assets in the US market.

#### **Key details of Facilities**

The key details of the senior bank facilities included in the Financing Plan are as follows in Table B.7:

**Table B.7: Key Details of Senior Bank Facilities**

<b>Key Details</b>	<b>Term Facility</b>	<b>Maintenance Capex Facility</b>
<b>Type</b>	Term facility	Delayed draw facility
<b>Lender</b>	To be determined	To be determined
<b>Purpose</b>	To fund all project costs including all transaction costs, bid costs and development costs incurred by the Developer or any of the Sponsors and all fees and expenses payable on financial close	To fund ongoing capital expenditures related to the Project. Between financial close and construction end, draws will be permitted to fund expenditures reimbursable by Public Funds which, due to timing restrictions, have not yet been made available to the Developer
<b>Final maturity date</b>	10 years after financial close	10 years after financial close
<b>Currency</b>	USD	USD
<b>Available balance</b>	\$395 million	\$15 million
<b>Balance at end construction</b>	\$395 million	\$0 million
<b>Security required</b>	First priority lien over Project collateral	First priority lien over Project collateral
<b>Ratings requirements</b>	None or one investment grade rating from a nationally recognized credit rating agency	None or one investment grade rating from a nationally recognized credit rating agency
<b>Monoline insurer</b>	N/A	N/A
<b>Indicative letter of support provided by:</b>	Please refer to Section B.2.3	Please refer to Section B.2.3

## Interest rates and fees

Details of the interest rate and fees assumed to be payable in relation to the senior bank facilities included in the Financing Plan reflect discussions with potential financiers and are as follows in Table B.8:

**Table B.8: Interest Rates and Fees Assumed on Senior Bank Facilities**

Interest Rates and Fees	Term Facility	Maintenance Capex Facility
<b>Ticking Fee</b>	40% of margin for 3 months prior to financial close	40% of margin for 3 months prior to financial close
<b>Upfront Fee</b>	300 bps	300 bps
<b>Commitment Fee</b>	40% of the credit margin	40% of the credit margin
<b>Base Rate</b>	3 month USD LIBOR	3 month USD LIBOR
<b>Drawn Margin</b>	Years 1-5: 325 bps Years 6-7: 350 bps Years 8-9: 375 bps Year 10: 400 bps	Years 1-5: 325 bps Years 6-7: 350 bps Years 8-9: 375 bps Year 10: 400 bps
<b>Default Rate</b>	Applicable interest rate plus 200 bps per annum	Applicable interest rate plus 200 bps per annum
<b>Swap Margin</b>	50 bps	50 bps
<b>Reference interest rate for benchmarking</b>	USD LIBOR based swap rate tailored for the drawdown and repayment schedule of the facility, with a swap tenor of 30 years from financial close	USD LIBOR based swap rate tailored for the drawdown and repayment schedule of the facility, with a swap tenor of 30 years from financial close
<b>Payment Periodicity</b>	Quarterly on an Act/360 basis	Quarterly on an Act/360 basis
<b>Minimum hedging requirements</b>	From financial close up to and including the fifth anniversary of financial close: 98% of the outstanding senior loan balance  From the day following the fifth anniversary of financial close up to and including the date that is 10 years from financial close: 85% of the outstanding loan balance	From financial close up to and including the fifth anniversary of financial close: 98% of the outstanding senior loan balance  From the day following the fifth anniversary of financial close up to and including the date that is 10 years from financial close: 85% of the outstanding loan balance
<b>Assumed Hedging Profile</b>	100% of the outstanding balance of the Term Facility is assumed to be hedged for 30 years from financial close via a LIBOR swap tailored to the facility's drawdown profile and assuming no amortization of the facility	100% of the outstanding balance of the Maintenance Capex Facility is assumed to be hedged for 30 years from financial close via a LIBOR swap tailored to the facility's drawdown profile and assuming no amortization of the facility

## Drawdown, debt service and repayment

Details of the drawdown, debt service and repayment terms of the senior bank facilities included in the Financing Plan are as follows in Table B.9:

**Table B.9: Drawdown, Debt Service and Repayment Turns on Senior Bank Facilities**

Drawdown, Debt Service and Repayment Terms	Term Facility	Maintenance Capex Facility
Availability period	From financial close until the first anniversary of substantial completion	Available to be drawn on a delayed draw basis from financial close until the 10th anniversary of financial close
Interest During Construction	Paid from committed funds available to the Developer	Paid from committed funds available to the Developer
Capital repayment moratorium	None	None
Repayment period	Bullet at maturity	Bullet at maturity
Average life	10 years	10 years

**Drawdown Schedule and Repayment Schedule**

**Drawdown Schedule**

Figure B.3 below illustrates the outstanding balance of the Term Facility under the Financing Plan. The Term Facility is drawn on a pro rata basis with the TIFIA Loan and the Equity Contribution after the PABs proceeds have been fully expended.

**Figure B.3: Accumulated Debt Drawdowns during Construction: Term Facility**

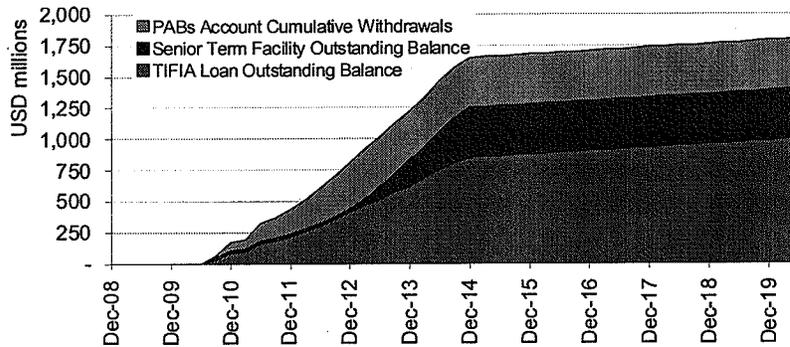
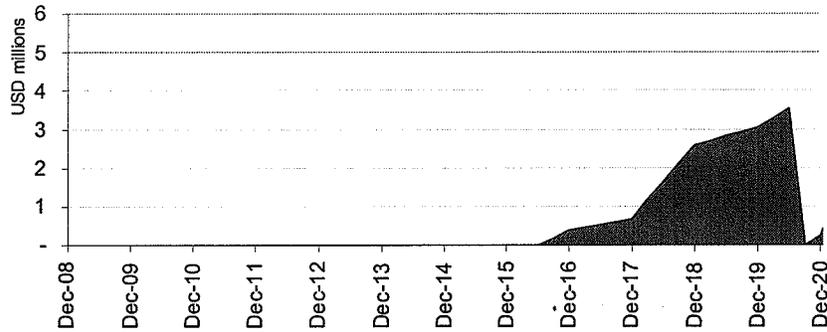


Figure B.4 below illustrates the outstanding balance of the Maintenance Capex Facility under the Financing Plan. Towards the end of the construction period (when other sources of financing have been exhausted), the Maintenance Capex Facility is used to bridge finance construction expenditures (of \$1.8) million which are reimbursable by Public Funds. This amount is repaid 1 month after draw down, when Public Funds become available under the terms of the CDA.

**Figure B.4: Accumulated Debt Drawdowns during Construction: Maintenance Capex Facility**



**Term and Conditions**

**Conditions Precedent to Financial Close**

Financial close and the first drawdown of any senior bank facility is expected to be subject to satisfaction or waiver of customary conditions precedent including, but not limited to, those found in the following Table B.10:

**Table B.10: Conditions Precedent to Financial Close for Senior Bank Facilities**

**Conditions precedent to financial close**

- Financing documents required to be in place on financial close shall have been duly authorized, executed, and delivered and will be in full force and effect;
- The Design and Build Contract, the Tolling Services Agreement and the CDA shall have been executed and delivered, and shall be in full force and effect;
- Final versions of the Traffic Report shall have been delivered;
- Final version of the Construction Budget shall have been delivered and the project costs shall have been certified as reasonable by the technical advisor;
- An updated Base Case Financial Model shall have been delivered together with an updated model audit report;
- The updated Base Case Financial Model shall satisfy a minimum LLCR ratio requirement of 2.0x and a minimum DSCR ratio requirement of 1.3x;
- A *pro forma* balance sheet of the Borrower as of the Financial Close and copies of all Governmental Approvals required to be in effect as of the Financial Close for the development of the Project shall have been delivered;
- Evidence of the due authorization and authority of the Borrower and Sponsors to execute each of the financing documents to which they are a party shall have been delivered;
- The Sponsors shall have made or provided irrevocable commitments to make capital contributions to the Developer in an agreed amount;
- All required legal opinions shall have been delivered;
- All filings and recordings necessary to perfect the security interests in the collateral shall have been completed;
- Insurance as required under the CDA and consistent with the recommendations in the Insurance Advisor's report shall be in full force and effect;
- Interest rate hedges as required by Lenders shall have been implemented;
- No government authority shall have taken any action prohibiting the transaction contemplated by the CDA;
- The Borrower shall have paid all fees and expenses of the Lenders and their agents;
- All representations and warranties made by the Borrower in any financing document shall be true and correct in all material respects; and
- No default or event of default shall have occurred and be continuing or shall occur as a result of such borrowing.

**Conditions Precedent to Drawdown**

Ongoing drawdowns of the senior bank facilities are expected to be subject to satisfaction or waiver of customary conditions precedent including, but not limited to, those found in the following Table B.11:

**Table B.11: Conditions Precedent to Drawdown for Senior Bank Facilities**

Conditions precedent to drawdown
<ul style="list-style-type: none"> <li>▪ Financial close shall have occurred;</li> <li>▪ A borrowing request setting forth the amount of senior loans requested and certifying the project costs towards which the proceeds of the loan will be applied shall have been delivered;</li> <li>▪ No event of default shall have occurred and be continuing or shall occur as a result of the borrowing (unless such draw is to be used to cure such event of default); and</li> <li>▪ All representations and warranties made by the Borrower in any financing document shall be true and correct in all material respects (other than those made as at a specified date).</li> </ul>

The additional conditions precedent expected to be applicable to drawdowns to fund capital expenditure during the construction period are found in the following Table B.12:

**Table B.12: Conditions Precedent to Drawdowns to Fund Capital Expenditure during the Construction Period on Senior Bank Facilities**

Conditions precedent to drawdowns to fund capital expenditure during the construction period
<ul style="list-style-type: none"> <li>▪ Delivery of a certificate identifying the work towards which the proceeds of the loans will be applied, confirming that there are no cost overruns in respect of such work and confirming that available funds are sufficient to complete construction of the relevant work in accordance with the CDA;</li> <li>▪ Delivery of a certificate of the Borrower confirming that all required insurances to carry out the work to be funded thereby are in place and premiums paid as and when due;</li> <li>▪ Delivery of a certificate of the technical advisor confirming that the relevant work is either required by the CDA or reasonable in accordance with prudent industry practices and permitted by the CDA, and that available funds are sufficient to complete construction of the relevant work in accordance with the CDA; and</li> <li>▪ Delivery of a written description of the scope, schedule and budget of the work to be funded thereby.</li> </ul>

The additional conditions precedents expected to be applicable to drawdowns to fund capital expenditures during the operating period are found in the following Table B.13:

**Table B.13: Conditions Precedent to Drawdowns to Fund Capital Expenditure during the Operating Period on Senior Bank Facilities**

Conditions precedent to drawdowns to fund capital expenditure during the operating period
<ul style="list-style-type: none"> <li>▪ Delivery of copies of the construction, procurement and other contracts related to the work to be funded;</li> <li>▪ A perfected security interest in the Borrower's rights, title and interest in and to such contracts and the assets and work constituting the work to be funded;</li> <li>▪ Delivery of a copy of the Project lease between TxDOT and the Borrower and a legal opinion regarding the security interest created by the leasehold mortgage; and</li> <li>▪ All governmental approvals required for the then-current stage of work shall have been obtained.</li> </ul>

**Affirmative Covenants**

It is expected that the Borrower will be required to comply with customary affirmative covenants under the terms of the senior bank facilities including but not limited to those found in the following Table B.14:

**Table B.14: Affirmative Covenants on Senior Bank Facilities**

Affirmative covenants
<ul style="list-style-type: none"> <li>▪ Delivery of audited annual and unaudited quarterly financial statements of the Borrower prepared in accordance with US GAAP together with a certification regarding defaults or events of defaults;</li> </ul>

- ✦ Maintenance of separate books, records, accounts, financial statements and tax returns;
- ✦ Delivery of notices upon a developer default under the CDA, compensation event under the CDA, material payment or compensation under the CDA, material changes or termination of any material Project contract, default or events of default under the Credit Agreement, material loss, material litigation or dispute, material insurance claims, material sales of assets, material liens or claims against the Borrower's collateral, entry into material contracts, lack of governmental approvals, events that may lead to a material adverse effect and force majeure events;
- ✦ Delivery of monthly construction progress reports;
- ✦ Delivery of "know your customer" information;
- ✦ Delivery of quarterly traffic and operating reports;
- ✦ Delivery of annual budgets;
- ✦ Permission of reasonable examinations of books and records;
- ✦ Maintenance of required insurance;
- ✦ Maintenance of the Project in accordance with the CDA, applicable governmental rules and required insurance policies;
- ✦ Performance of obligations and enforcement of rights under material project contracts;
- ✦ Maintenance of and compliance with required governmental approvals and governmental rules;
- ✦ Maintenance of legal status;
- ✦ Timely filing and payment of taxes;
- ✦ Preservation and maintenance of security interests;
- ✦ Delivery of a restoration plan with respect to a material event of loss;
- ✦ Maintenance of independent auditors with recognized national standing;
- ✦ Use of proceeds of the senior loans exclusively for the purposes specified;
- ✦ Engagement and payment of independent consultants and advisors; and
- ✦ Establishment and maintenance of project accounts.

**Negative Covenants**

It is expected that the Borrower will be required to comply with customary negative covenants under the teams of the senior bank facilities including but not limited to those found in the following Table B.15:

**Table B.15: Negative Covenants on Senior Bank Facilities**

Negative covenants
<ul style="list-style-type: none"> <li>✦ The Borrower will not enter into any fundamental changes in structure or organization or any transaction of merger or consolidation, or conduct sales or purchases of assets other than as permitted in the transaction documents;</li> <li>✦ The Borrower shall not engage in any business other than activities that are related to the Project;</li> <li>✦ The Borrower shall not assume any additional indebtedness, except for certain permitted debt;</li> <li>✦ The Borrower shall not incur any additional liens except for certain permitted liens;</li> <li>✦ The Borrower shall not make any investments other than certain permitted investments;</li> <li>✦ The Borrower will not pay any dividend or distribution or payments in respect of permitted affiliated subordinated debt ("Restricted Payments") unless certain conditions (to be negotiated) have been satisfied;</li> <li>✦ The Borrower will not assign any material project contract or materially amend or modify, or waive timely performance by any counterparty to any material project contract;</li> <li>✦ The Borrower will not enter into any new material project contract except with respect to the operation, maintenance, construction or financing of the Project;</li> <li>✦ The Borrower will not modify its constitutive documents;</li> <li>✦ The Borrower will not maintain any bank accounts other than the project accounts;</li> <li>✦ The Borrower will not elect to receive compensation amounts under the CDA in any form other</li> </ul>

than monetary without consent;

- The Borrower will not engage in behavior that breaches any anti-terrorism laws or anti-money laundering regulations; and
- The Borrower will not file an election to be treated as an association taxable as a corporation.

## Default Provisions

It is expected that the senior bank facilities will provide for customary events of default (together with customary cures and cure periods), including but not limited to those found in the following Table B.16:

**Table B.16: Default Provisions on Senior Debt Facilities**

### Default provisions

- Failure to pay principal or interest on the senior loans or PABs or amounts due under the hedging agreements;
- Failure to pay fees or other amounts payable under the credit agreement;
- Any certification made by the Borrower in relation to a Restricted Payment proves to have been incorrect;
- Any representation or warranty made by the Borrower in any financing document proves to have been incorrect in any material respect when made;
- A "bankruptcy related event" (as defined in the TIFIA credit agreement) shall have occurred and be continuing;
- Failure to comply with any affirmative or negative covenant ;
- Abandonment of the Project;
- Entry of a non-appealable final judgment against the Borrower which is reasonably likely to result in a material adverse effect;
- Any security document ceases to be effective to grant a perfected first priority lien on the collateral;
- An event of loss or a condemnation or nationalization event occurs;
- Any necessary governmental approval is terminated or not obtained, maintained, or complied with;
- The CDA or any other material project contract ceases to be valid and binding and in full force and effect or is terminated prior to its expiration date or any other material provision thereof is declared null and void;
- The Borrower denies further liability or obligation under the CDA or any other material project contract;
- A developer default giving rise to TxDOT termination rights under the CDA has occurred;
- Failure to observe any material provision or breach of any material representation made under the CDA or any other material project contract that could result in a materially adverse effect;
- An ERISA event has occurred that could reasonably be expected to result in a material adverse effect; and
- Any financing document shall be revoked, repudiated or terminated by the Borrower.

## B.3.2 Private Activity Bonds

The Financing Plan includes a \$395 million issuance of PABs. The Consortium has secured a provisional allocation of up to \$2.65 billion of the \$15.0 billion national limitation on the aggregate amount of PABs available for qualified highway expenditures in accordance to Section 11143 of Title XI Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This allocation is subject to the following conditions:

- the Consortium must be selected as the concessionaire by TxDOT and the CDA must be executed;
- a final bond counsel tax and validity opinion must be issued at the time of the closing of the bond issue; and
- the bonds must be issued no later than April 27, 2010.

Provisional Bond Allocation Approval letters from USDOT can be found in Volume 1, Attachments to B, C, D, E, & F of this Proposal.

The Consortium's Financing Plan assumes that financial close will occur after April 27, 2010. This assumption maximizes the value provided to TxDOT by allowing the greatest period for recovery of the financial markets. The USDOT has indicated to the Consortium that while one year after the expected execution date of the concession agreement for a Project is the standard PABs allocation period, it does not anticipate any difficulties in extending this deadline.

The parameters of the PABs issuance are based on extensive discussions with potential underwriters prior to the proposal due date.

**Key details of Facility**

The key details of the PABs included in the Financing Plan are as follows in Table B.17:

**Table B.17: Key Details on PABs**

Key Details	
<b>Type</b>	Senior secured long term fixed rate tax-exempt PABs subject to the Alternative Minimum Tax ("AMT")
<b>PABs Conduit Issuer</b>	The Texas Private Activity Bond Surface Transportation Corporation or other corporation or similar entity authorized under Texas Law to issue the PABs (the "PABs Issuer")
<b>Structure</b>	The proceeds of the issuance will be loaned to the Developer under a back-to-back loan agreement ("PABs Loan Agreement"). The Developer will issue a promissory note or similar instrument evidencing its repayment obligation ("Promissory Note")
<b>Underwriter</b>	To be determined
<b>Purpose</b>	To fund qualified highway expenditures
<b>Final maturity date</b>	30 years from issue date
<b>Currency</b>	USD
<b>Issuance amount</b>	\$395 million
<b>Balance at end construction</b>	\$395 million
<b>Security</b>	A pledge of the PABs Issuer of its interest under the PABs Loan Agreement and related Promissory Note; a pledge of certain indenture accounts; and a first priority lien over the Project collateral.
<b>Ratings required</b>	An investment grade rating from a nationally recognized credit rating agency
<b>Monoline insurer</b>	N/A
<b>Indicative letter of support provided by:</b>	Please refer to Section B.2.2

**Interest rates and fees**

Details of the interest rate and fees assumed to be payable in relation to the PABs included in the Financing Plan are as follows in Table B.18:

**Table B.19: Interest Rates and Fees on PABs**

Interest Rates and Fees	
Underwriting Fee	100 bps
Bond Coupon / Yield	8.00% per annum
Reference interest rate for benchmarking	30 year AAA MMD Index
Proposed hedging arrangements	N/A – the PABs are a fixed rate obligation

**Drawdown, debt service and repayment**

Details of the drawdown, debt service and repayment terms of the PABs included in the Financing Plan are as follows in Table B.20:

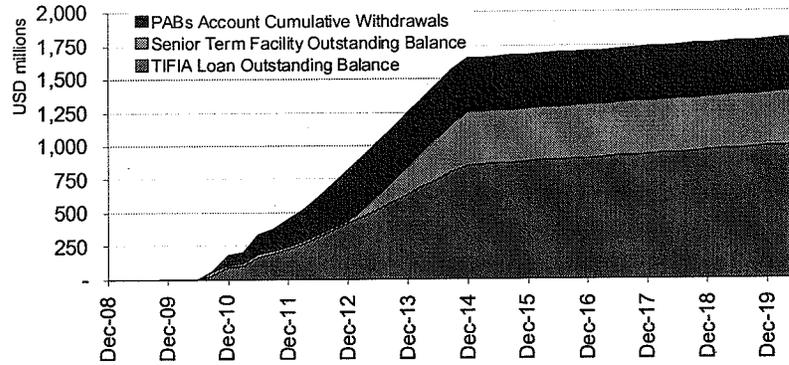
**Table B.20: Drawdown, debt service and repayment of PABs**

Drawdown, Debt Service and Repayment Terms	
Availability period	The PABs will be issued at financial close and the proceeds deposited into an account (the "PABs Account") held for the benefit of the PABs Indenture Trustee on behalf of the PABs Bondholders and used to fund qualified highway expenditure
Interest During Construction	Paid from committed funds available to the Developer
Payment periodicity	Semiannually in arrears on a 30/360 basis
Capital repayment moratorium	On any business day after 10 years from the date of issue, the PABs may be redeemed, at the option of the PAB Issuer upon written direction of the Borrower, in whole or from time to time in part, at a redemption price equal to 100% of the principal amount of such PABs, plus the accrued interest. Any redemption prior to this time may be permitted upon payment of a make whole amount (except in certain extraordinary circumstances – see Extraordinary Redemption below), subject to market conditions and requirements.
Repayment period	The PABs will be fully amortizing in accordance with an amortization profile consistent with market and rating agency requirements
Average life	25.5 years

**Drawdown**

Figure B.5 below illustrates the cumulative withdrawals from the PABs Account under the Financing Plan. The PABs proceeds will be spent pro rata with drawdowns on the TIFIA Loan and the Equity Contribution.

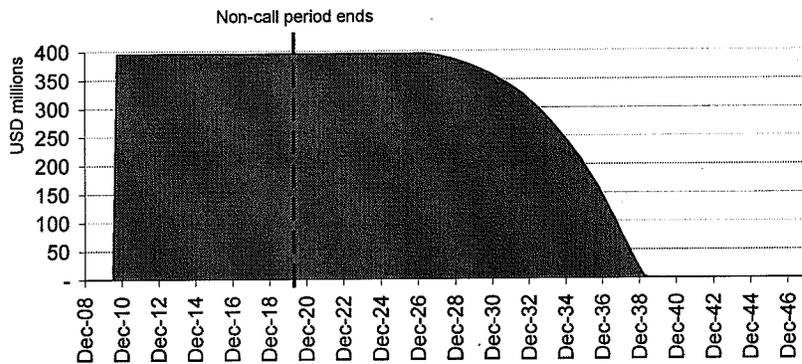
**Figure B.5: Accumulated Debt Drawdowns during Construction: PABs Account**



**Debt service and repayment**

The PABs will be fully amortizing in accordance with an amortization profile consistent with market and rating agency requirements and expected to commence in year 17, as illustrated in Figure B.6 below.

**Figure B.6: PABs Amortization Profile**



**Extraordinary Redemption**

It is expected that the PABs will be subject to mandatory redemption at a redemption price of 100% of the principal to be redeemed plus any accrued interest in limited circumstances which are expected to include:

- there is a determination that interest paid on the PABs is not tax exempt;
- the Project is substantially or completely damaged or destroyed and not repaired in accordance with the CDA or is taken for any public use;
- the CDA is terminated; or
- there are any excess bond proceeds after construction completion (mandatory redemption occurs on the amount equivalent to the excess amount).

**Conditions precedent, Covenants and Default Provisions**

It is expected that the bondholders (as represented by the PABs underwriter in negotiations prior to financial close) will require the Developer to be subject to conditions precedent, covenants and default provisions customary for non-recourse project finance bonds and similar to those required under the senior bank facilities.

Conditions precedent to financial close particular to the PABs issuance are expected to include the following:

- The issuance of a final bond counsel opinion regarding the legality and validity of the PABs and the tax exempt status of the interest on the PABs;
- Delivery of an investment grade rating of the PABs by a nationally recognized credit rating agency; and
- Satisfaction or waiver of all conditions precedent to the Bond Purchase Agreement.

### **B.3.3 TIFIA Loan**

The Consortium has secured a conditional commitment from the USDOT to provide credit assistance to the Consortium for the Project pursuant to the TIFIA Act of 1998, Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21, Public Law 105-178), as amended by sections 1601-02 of the SAFETEA-LU, Public Law 109-59, codified as 23 U.S.C. §§601-09.

The TIFIA Conditional Term Sheet can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 5 of this Financial Proposal.

The conditional commitment is to provide a TIFIA Loan in an original principal amount not to exceed \$800 million. The Financing Plan includes a TIFIA Loan in the amount of \$790 million. This principal amount satisfies both the condition that the amount of the TIFIA Loan shall not exceed the amount of the initial senior obligations at Financial Close (if the TIFIA Loan does not itself receive an investment grade rating) and the condition that the TIFIA Loan cannot exceed 33% of reasonably anticipated eligible project costs.

The USDOT has advised that it will reserve up to \$70m in TIFIA budget authority from its 2010 fiscal year appropriation to pay the Federal Government's subsidy cost of credit assistance to the Project. This reservation of budget authority is dependent upon congressional reauthorization of the TIFIA program and appropriation of budget authority under the program to pay the subsidy cost associated the TIFIA loan. As a result of the subsidy cost being reserved from the USDOT's 2010 fiscal year, the Consortium understands that it will not be possible to reach financial close on the TIFIA Loan prior to October 1, 2009.

The TIFIA Conditional Term Sheet provides that any required subsidy cost greater than \$70 million to fund the full amount of the TIFIA Loan must be paid by the Borrower at financial close. Based on discussions with the TIFIA Joint Project Office, the Consortium has assumed a subsidy cost of \$99 million or 12.5% of the TIFIA Loan. The Financing Plan provides funding for the additional \$29 million of subsidy cost required to fund the \$790 million TIFIA Loan.

Capitalized terms used in this section have the meaning ascribed to them in the TIFIA Conditional Term Sheet.

USDOT requires an investment grade rating by a nationally recognized rating agency for any debt which is senior to the TIFIA Loan. An indicative investment grade rating letter from Moody's ("Moody's Rating Letter") which is consistent with this requirement can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 7 of this Proposal.

The TIFIA Conditional Term Sheet and the Moody's Rating Letter describe a financing structure that differs in some respects from the Financing Plan. The significant differences are described and explained in Table B.20 below.

**Table B.21: Differences between Financing Structure and Moody's and TIFIA Structures**

Difference	Explanation
Form of initial liquidity support	<ul style="list-style-type: none"> <li>• The TIFIA Conditional Term Sheet and the Moody's Rating Letter assume</li> </ul>

	<p>that a senior liquidity facility shall be in place at financial close.</p> <ul style="list-style-type: none"> <li>Continuing discussions with potential financiers in the period prior to the Proposal Due Date indicated a preference for cash reserves as an initial source of liquidity for the Project. See further discussion of the General Reserve in Section B.3.4 of this Proposal.</li> </ul>
Total Project cost	<ul style="list-style-type: none"> <li>The DB Agreement price and other capital costs continued to be refined and negotiated until immediately prior to the Proposal Due Date.</li> <li>Further, the DB Agreement price is a key competitive parameter and its confidentiality is paramount; therefore it is not shared with external parties prior to the Proposal Due Date.</li> <li>The cost of interest during construction presented in the Financial Proposal reflects interest rates at the commencement of the Interest Rate Benchmarking Period (January 14, 2009).</li> </ul>
Equity contribution	<ul style="list-style-type: none"> <li>The Equity Contribution is determined by the equity investors' required internal rate of return ("IRR") and other investment criteria.</li> <li>These investment criteria are not finalized until immediately prior to the Proposal Due Date.</li> <li>The equity IRR is a key competitive parameter and its confidentiality is paramount; therefore it is not shared with external parties prior to the Proposal Due Date.</li> <li>The Equity Contribution in the Financing Plan is higher than the contribution presented to the USDOT and Moody's for review.</li> </ul>
Equity bridge facility	<ul style="list-style-type: none"> <li>The Moody's Rating Letter contemplates the possibility that an equity bridge facility could be in place at financial close.</li> <li>Continuing discussions with potential financiers in the period prior to the Proposal Due Date indicated limited appetite to provide an equity bridge facility.</li> <li>The Consortium will continue to evaluate the possibility of utilizing an equity bridge in the period prior to financial close.</li> </ul>
Public Funds	<ul style="list-style-type: none"> <li>The Public Funds request is an output determined by the total Project cost and the equity contribution.</li> <li>Like the total Project cost and the equity contribution, the Public Funds amount is not finalized until immediately prior to the Proposal Due Date. It is a key competitive parameter and its confidentiality is paramount; therefore it is not shared with external parties prior to the Proposal Due Date.</li> <li>Similarly, the Public Funds request was not final until immediately prior to the Proposal Due Date.</li> </ul>

In relation to the initial liquidity support and the equity contribution, the parameters included in the Financing Plan are more conservative than those presented to USDOT and Moody's, so will be viewed in a positive manner to improve the credit quality of the project.

## Key details of Facility

The key details of the TIFIA Loan are as follows in Table B.21:

**Table B.22: Key Details of the TIFIA Loan**

Key Details	
Type	TIFIA Direct Loan
Lender	United States Department of Transportation
Purpose	To reimburse eligible project costs incurred in connection with the Project
Final maturity date	December 31, 2050 or no later than 35 years from the date on which Substantial Completion (as defined in the CDA) has been achieved for all segments of the Project
Currency	USD
Available balance	Not to exceed \$800 million, provided that the maximum amount of the TIFIA Loan cannot exceed 33% of reasonably anticipated eligible project costs or, if the TIFIA Loan does not receive an investment grade rating, the amount of the initial senior obligations at Financial Close. The Financing Plan includes a TIFIA Loan in the amount of \$790 million.
Balance at end construction	\$877 million including capitalized interest
Security	A second priority security interest in Pledged Revenues and liens and security interests in other project assets subordinate only to the lien of the senior obligations (including certain hedge obligations). A first priority security interest in Pledged Revenues (but no other project assets) on parity with the lien of the Senior Debt Obligations (including certain hedge obligations) upon the occurrence of a Bankruptcy Related Event. Please refer to the TIFIA Conditional Term Sheet for a definition of Bankruptcy Related Event.
Ratings required	Investment grade rating by a nationally recognized rating agency for any debt senior to the TIFIA Loan. An indicative investment grade rating letter from Moody's which is consistent with this requirement can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 7 of this Financial Proposal.
Monoline insurer	N/A
Indicative letter of support provided by:	United States Department of Transportation

## Interest rates and fees

Details of the interest rate and fees payable in relation to the TIFIA Loan are as follows in Table B.22:

**Table B.23: Interest Rates and Fees on TIFIA Loan**

Interest Rates and Fees	
Loan Servicing Fee	As described in TIFIA Conditional Term Sheet (Volume 1, Attachments to B, C, D, E, & F, Attachment 5 of this Financial Proposal)

## Interest Rates and Fees

<b>Base interest rate</b>	The rate of securities of a similar maturity as published on the execution date of the TIFIA Credit Agreement(s) in the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series ("SLGS") securities
<b>Margin</b>	1 basis point
<b>Default interest rate</b>	200 basis points above the TIFIA interest rate
<b>Reference interest rate for benchmarking</b>	The rate for securities with a 30 to 40 year maturity as published in the United States Treasury Bureau of Public Debt's daily rate table for SLGS securities
<b>Proposed hedging arrangements</b>	N/A – the TIFIA Loan is a fixed rate obligation

## Drawdown, debt service and repayment

Details of the drawdown, debt service and repayment terms of the TIFIA Loan are as follows in Table B.23:

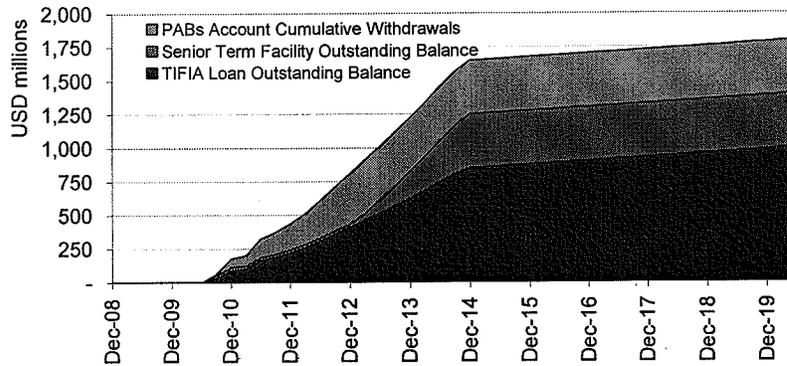
**Table B.24: Drawdown, Debt Service and Repayment Terms on TIFIA Loan**

Drawdown, Debt Service and Repayment Terms	
<b>Availability period</b>	Available to finance eligible project costs; or to refinance interim construction financing of eligible project costs no later than one year following substantial completion (according to the TIFIA Program Guide)
<b>First interest payment</b>	Year 6 following the date on which substantial completion (as defined in the CDA) has been achieved for all segments of the Project. See further detail below
<b>Payment periodicity</b>	Semi-annual payments on an actual/actual basis
<b>Capital repayment moratorium</b>	None
<b>Repayment period</b>	Year 21 through year 35 following the date on which substantial completion (as defined in the CDA) has been achieved for all segments of the Project. See further detail below
<b>Average life</b>	35 years

## Drawdown

Figure B.7 below illustrates the outstanding balance of the TIFIA Loan under the Financing Plan. The TIFIA Loan will be drawn pro rata with the PABs expenditures and the Equity Contribution. After the PABs Account has been exhausted, the TIFIA Loan will be drawn pro rata with the Senior Bank Term Facility and the Equity Contribution.

**Figure B.7: Accumulated Debt Drawdowns during Construction: TIFIA Loan**



## Debt service and repayment

TIFIA debt service is structured to include both mandatory payments and scheduled payments in years 6 through year 25 year following the date on which substantial completion (as defined in the CDA) has been achieved for all segments of the Project. Mandatory payments are unconditionally required to be paid as set forth in the TIFIA Credit Agreement. Scheduled payments are to be paid only to the extent that net project revenues, after operations and maintenance and senior debt service, are available.

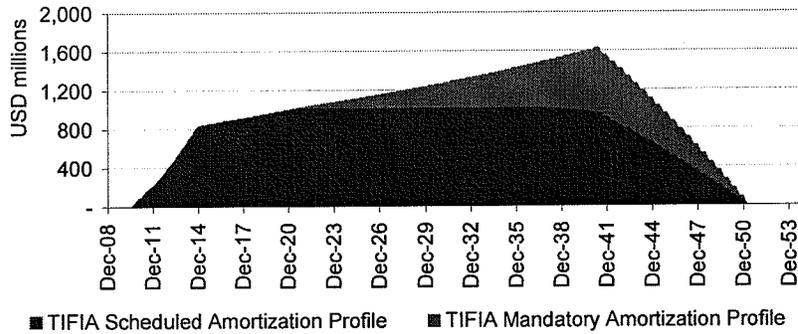
There is no scheduled or mandatory debt service during the first five years following the substantial completion. Following this period, the scheduled and mandatory payments are expected to be as follows in Table B.24:

**Table B.25: Debt Service and Repayment for TIFIA Loan**

Scheduled Payments
<ul style="list-style-type: none"> <li>• 100% of current interest (assuming all scheduled debt service in previous periods is paid) in year 6 through year 25 following substantial completion; and</li> <li>• Principal payments totaling \$50 million in year 21 through year 25 following substantial completion.</li> <li>• From 25 years after substantial completion, all TIFIA debt service is mandatory.</li> </ul>
Mandatory Payments
<ul style="list-style-type: none"> <li>• Mandatory interest equal to 10% of scheduled interest in year 6 following the substantial completion date;</li> <li>• Mandatory interest equal to 17.5% of scheduled interest in year 7 following the substantial completion date;</li> <li>• Mandatory Interest equal to 25% of scheduled interest in year 8 through year 25 following the substantial completion date; and</li> <li>• Level payments of mandatory principal and interest in year 26 through year 35 following the substantial completion date ("Level Payment Period"). Any unpaid portion of scheduled debt service shall be capitalized and added to the outstanding TIFIA Loan balance at the beginning of the Level Payment Period, and the level payments of mandatory principal and interest during the Level Payment Period shall be calculated as of the first day of the Level Payment Period in such manner that the outstanding TIFIA Loan balance as of such date shall be reduced to \$0 on the final maturity date of the TIFIA Loan.</li> </ul>

Figure B.8 below illustrates the outstanding balance of the TIFIA Loan under the base case as well as the outstanding balance of the TIFIA Loan in the event that only mandatory debt service is paid.

**Figure B.8: TIFIA Mandatory and Scheduled Amortization Profile**



## Revenue Sharing

Following the first five years from the substantial completion date and subject to any requirements of senior lenders, 50% of toll revenues in any period which exceed the toll revenues forecast for that period in the investment grade traffic and revenue study for the project conducted by Arup ("TIFIA Revenue Sharing Amount") shall be used to prepay the TIFIA loan to the extent the TIFIA Revenue Sharing Amount is available at the level immediately above Restricted Payments in the flow of funds outlined in the TIFIA Conditional Term Sheet. As a result of its position in the flow of funds, TIFIA Revenue Sharing will only occur to the extent that funds are available after any revenue sharing payments to TxDOT and many other cash flow priorities.

## Eligible Project Costs

Eligible project costs are defined in title 23 of the U.S.C. §601 as those expenses associated with the following:

- Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;
- Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and
- Capitalized interest necessary to meet market requirements, reasonable required reserve funds, capital issuance expenses, and other carrying costs during construction.

The appendix to the TIFIA Conditional Term Sheet further details which costs are eligible for TIFIA purposes and has assisted the Consortium in its calculation of anticipated eligible project costs. These costs have been verified through discussions with the TIFIA JPO.

The amount of the TIFIA Loan included in the Financing Plan (\$800 million) does not exceed 33% of the Consortium's reasonably anticipated eligible project costs, as demonstrated in Table B.25 below.

**Table B.26: TIFIA Eligible Project Costs**

Eligible project cost	Consortium's reasonably anticipated costs (USD million)
TxDOT Preliminary Engineering Expenditures	30
Due Diligence Fees	34
Construction	2,167
Capitalized Interest	236

Eligible project cost	Consortium's reasonably anticipated costs (USD million)
Reserve Funds	125
Capital Issuance Expenses	38
Other Carrying Costs During Construction	81
<b>Total Eligible Project Costs</b>	<b>2,711</b>
33% of Total Eligible Project Costs	894

## Term and Conditions

### Conditions Precedent to Financial Close

Execution of the TIFIA Credit Agreement shall be subject to the requirements and conditions which apply to the Senior Debt Facilities (Section B.3.1) plus additional conditions including, but not limited to those found in the following Table B.26:

**Table B.27: Conditions Precedent to Financial Close for TIFIA Loan**

#### Conditions Precedent to Financial Close

- Execution and delivery of the senior obligation agreements and the subordination and intercreditor agreement (as applicable);
- The Lenders' Base Case projection at financial close demonstrates that Net Revenues (defined to include the amounts available in liquidity support arrangements for the first 10 years following the Substantial Completion Date only) in any year will produce (i) a senior debt service coverage ratio at least equal to 1.25 in such year and (ii) a combined debt service coverage ratio (taking into account both mandatory and scheduled TIFIA debt service) at least equal to 1.10 in such year;
- The Lenders' Base Case Financial Model at financial close shall not show any amortization of senior debt until all currently accruing TIFIA interest is being paid;
- Delivery of a standby letter of credit or equivalent support acceptable to USDOT for equity commitments to be made subsequent to Financial Close;
- Demonstration to the USDOT's satisfaction that the Project's Financing Plan is sufficient to complete the Project;
- Delivery of an investment grade rating by a nationally recognized rating agency for any debt senior to the TIFIA Loan;
- Delivery of an independent peer review of the Borrower's traffic and revenue study by a traffic consultant approved by the USDOT;
- Cooperation of the Borrower in the independent risk assessment of the financial viability of the Project to be conducted by the Lender;
- Evidence of compliance with the National Environmental Policy Act of 1969 (NEPA);
- Evidence of the inclusion of the Project in relevant metropolitan and state transportation plans as required by section 610(a)(1) of the TIFIA Statute;
- Delivery of material Project agreements, all in form and substance satisfactory to USDOT;
- Provision to USDOT of records of the eligible project costs prior to the date of TxDOT's application in sufficient time to permit USDOT to conduct an audit of such costs prior to Financial Close;
- Demonstration to USDOT's satisfaction of all necessary funding, permits and governmental approvals necessary to commence construction;
- Evidence satisfactory to USDOT of compliance with the TIFIA statute and conditions precedent set forth in the operative documents.

### Conditions Precedent to Drawdowns

The TIFIA Conditional Term Sheet states that disbursements shall be made monthly to the Borrower pursuant to disbursement conditions to be set forth in the TIFIA Credit Agreement. The disbursements will be subject to the conditions

which apply to the Senior Debt Facilities (Section B.3.1) plus additional conditions which will have not been fully negotiated but on the basis of the TIFIA Conditional Term Sheet, are expected to include those found in the following Table B.27:

**Table B.28: Conditions Precedent to Drawdowns for TIFIA Loan**

Conditions Precedent to Drawdowns	
▪	A failure to achieve substantial completion by the Long Stop Date (as defined in the CDA) shall not have occurred.
▪	TIFIA disbursements shall be on a pro rata basis with disbursements of the proceeds of senior loans, unless otherwise agreed to by the USDOT.

**Affirmative Covenants**

The TIFIA Conditional Term Sheet places obligations on the Borrower as found in the following Table B.28:

**Table B.29: Affirmative Covenants for TIFIA Loan**

Affirmative Covenants	
▪	The Borrower shall maintain hedges (with a provider rated in the double A category or higher) during any period in which the senior obligations bear interest at a variable interest rate. Each "Qualified Hedge" shall provide for a fixed interest rate or interest rate cap resulting in fixed interest payment amounts at a rate less than or equal to the long-term fixed swap rate. Acceptable hedges will also include a hedging reserve fund or "rolling hedges" with a stated termination date of at least one year. <ul style="list-style-type: none"> <li>- On or prior to financial close, the Borrower shall put in place Initial Qualified Hedge(s) with an aggregate stated notional amount of not less than 98% of the aggregate principal amount of the variable interest rate senior obligations incurred at financial close and with a stated maturity or termination date not earlier than the final maturity date of the initial senior obligations.</li> <li>- Subsequent Qualified Hedge(s) shall be selected with TIFIA's consent and subject to a fair price certificate.</li> </ul>
▪	The Borrower shall (as set forth in Exhibit 4 to the CDA) fix, charge and collect rates and charges such that Net Revenues in any year shall be projected to produce (i) a senior debt service coverage ratio at least equal to 1.25 in such year and (ii) a combined debt service coverage ratio (taking into account TIFIA mandatory debt service only) at least equal to 1.1 in such year. If the Borrower determines that Net Revenues may be inadequate to comply with the rate coverage test for any year, or that the test was not satisfied for any year, the Borrower shall (a) engage the Traffic Auditor to review and analyze the operations of the Project and recommend actions regarding revising the rates, changing the methods of operations or other actions to increase the Net Revenues as to satisfy the rate covenant and (b) either implement the Traffic Auditor's recommendation or undertake an alternative plan that the Traffic Auditor agrees is likely to generate equivalent or greater Net Revenues than the Traffic Auditor's recommended actions; provided, that the Borrower is not required to take any action that may result in a breach by the Borrower of its obligations under the CDA.
▪	The Borrower shall maintain reasonable debt service reserves or other liquidity support during the term of the TIFIA Loan. This Liquidity Requirement shall be satisfied by a liquidity facility, standby letter of credit, cash collateral or other liquidity support acceptable to USDOT ("Replacement Liquidity Facility") with an available balance equal to the sum of the senior and TIFIA (scheduled and mandatory) debt service due and payable during a twelve month period commencing from each payment date. <ul style="list-style-type: none"> <li>- During the first ten years after financial close, the Borrower shall establish a Debt Service Reserve Account ("DSRA") into which funds will be paid in accordance with the Flow of Funds up to a required balance defined by reference to the senior and TIFIA (scheduled and mandatory) debt service payable in years 6 to 10 of operations. The balance of the DSRA may be released to equity if the Borrower secures a commitment to provide a Replacement</li> </ul>

Liquidity Facility which is available for a minimum of 5 years from the end of year 5 of operations.

- The DSRA shall be re-established and have a required balance at any time where there is no Replacement Liquidity Facility currently in place or the time remaining until the expiry of the Replacement Liquidity Facility currently in place is less than 2 years and the Borrower has not secured a commitment for a replacement. Failure to fund the DSRA shall not constitute an event of default under the TIFIA Loan.
- In certain circumstances set out in the TIFIA Conditional Term Sheet, the Borrower shall be obliged to secure a liquidity facility which shall be available from the beginning of year 26 following the Substantial Completion Date and which shall have an available balance sufficient to demonstrate a Combined Debt Service Coverage Ratio at least equal to 1.10x in each year for the remaining term of the TIFIA Loan.
- The Borrower shall provide to USDOT annually a private rating on the senior obligations and the TIFIA Loan by a nationally recognized rating agency.
- The Borrower shall provide executed copies of agreements regarding operation, management, maintenance, safety and financial services for the Project.
- The proceeds of the senior obligations held in the construction fund and any debt service reserve funds shall be invested in Permitted Investments (as defined in the TIFIA Conditional Term Sheet).
- Obligations related to accounting procedures, fiscal controls, audits, record keeping and file retention.
- Obligations related to provision of annual reports, financial statements, Financing Plans, progress reports and other information.

## Negative Covenants

The TIFIA Conditional Term Sheet places restrictions on the Borrower as found in the following Table B.29:

**Table B.30: Negative Covenants for TIFIA Loan**

Negative Covenants	
•	There shall be no release to equity of any kind unless: <ul style="list-style-type: none"> <li>- TIFIA debt service (mandatory and scheduled) is current (during the period of deferred principal and interest, currently accruing interest must be paid);</li> <li>- The combined debt service ratio (taking into account both mandatory and scheduled TIFIA debt service, and not taking into account amounts then available in any liquidity support arrangements) is equal to at least 1.20x for the 12 months preceding the distribution date and is projected to equal at least 1.20 for the twelve months following the distribution date; and</li> <li>- All requirements with respect to the Debt Service Reserve Account as defined in the TIFIA Conditional Term Sheet have been satisfied.</li> </ul>
•	Additional indebtedness on a parity with the initial senior obligations may not be incurred unless the conditions set out in the TIFIA Conditional Term Sheet are met. In most circumstances, an investment grade rating is required and certain coverage tests must be met.

## Default Provisions

Events of Default under the TIFIA Conditional Term Sheet include (but are not limited to) those found in the following Table B.30:

**Table B.31: Default Provisions for TIFIA Loan**

Default Provisions	
•	An acceleration occurs with respect to any Project debt senior to or on a parity with the TIFIA credit instrument.
•	There is a failure to make a mandatory debt service payment when due.
•	Any of the Borrower's representations, warranties or certifications under the financing agreements is materially false or misleading or the Borrower fails to comply with any covenants or agreements under such documents, subject to a cure period.
•	A Bankruptcy Related Event occurs.

- A material default by the Borrower under any other documents executed in connection with the Project occurs and has a material adverse effect on the Borrower's ability to comply with its obligations under the TIFIA Credit Agreement, subject to a cure period.
- The Borrower fails to achieve substantial completion by the Long Stop Date, as defined in the CDA ("Development Default"), subject to a cure period if the Development Default is solely the result of an Uncontrollable Force.
- The Borrower abandons or ceases to operate the Project for an extended period (other than for force majeure or other reasons covered by insurance).

### B.3.4 Reserve Accounts

The Financing Plan includes three reserves:

- A general reserve ("General Reserve") to be established at financial close in the form of cash or a letter of credit in favor of the Developer from an acceptable financial institution ("Reserve LC"), in an amount not less than \$125 million. This reserve has been sized to cover the maximum annual debt service during the first 10 years following financial close and to provide a significant additional liquidity buffer which enhances the robustness and flexibility of the financing structure in any revenue stabilization period. (The Developer shall not be responsible for the cost of the Reserve LC or for reimbursing the providing financial institution for any draws on it.) The Financing Plan assumes that the General Reserve is provided in the form of a Reserve LC during the construction period, and in the form of cash after construction end. The General Reserve or Reserve LC may be drawn to fund any cash flow shortfalls during the term of the senior facilities. The General Reserve or Reserve LC will be released on the tenth anniversary of financial close if the Developer has secured a liquidity facility or other liquidity support in an amount sufficient to satisfy the requirements of lenders. . The Financial Model assumes a 0% Reserve LC cost during the period that the General Reserve is provided in the form of a Reserve LC.
- A Refinancing Reserve will be funded from excess Project cash flows in accordance with the Flow of Funds set out in the TIFIA Conditional Term Sheet and up to an expected closing balance in each period (\$96 million at the maturity of the initial senior bank facilities, under the Financing Plan). The funds in the Refinancing Reserve shall be available for the purpose of repaying any overdue principal amounts in respect of the senior bank facilities. The entire balance of the Refinancing Reserve will be released to equity upon a successful refinancing of the senior bank facilities.
- A TIFIA Debt Service Reserve Account will be funded from Project cash flows in accordance with the Flow of Funds set out in the TIFIA Conditional Term Sheet. This reserve is intended to create a cash balance which will remain in place as a debt service reserve after the tenth anniversary of financial close only if the Developer has not secured a liquidity facility or other liquidity support acceptable to USDOT (in an amount sufficient to cover annual senior and TIFIA debt service). It is anticipated that the objectives of the TIFIA Debt Service Reserve Account will be satisfied by the General Reserve described above (which will not be released unless the Developer has secured a liquidity facility or other liquidity support in an amount sufficient to satisfy the requirements of lenders) and that it will therefore not be required as part of a financing structure including the General Reserve; however the Consortium has conservatively assumed that both the General Reserve and the TIFIA Debt Service Reserve Account are in place.

## B.3.5 Contemplated Refinancings

### Refinancing of Initial Senior Debt Facilities and Instruments; Replacement of Initial Senior Debt Facilities and Reserves

The Financing Plan assumes refinancings of the initial senior debt facilities and instruments as summarized in Table B.31 below.

The Financing Plan assumes that at maturity, the outstanding balances of the senior bank facilities will be refinanced into new senior term facilities. It is also assumed that the PABs are refinanced into a senior term facility upon the expiry of the 10 year non call period. This refinancing facility is assumed to be replaced every ten years.

The Financing Plan assumes the establishment of new facilities to fund the maintenance capital expenditure requirements of the Project every ten years during the term of the senior debt. It is also assumed that a liquidity facility is established at the first refinance date (and every 10 years thereafter) to replace the General Reserve in compliance with TIFIA debt service reserve requirements. The liquidity facilities are assumed to be sized to the maximum annual debt service during each ten year term. The new maintenance capex and liquidity facilities are assumed to have the same commercial terms as the refinanced senior bank amounts. At the maturity of each maintenance capex facility, any outstanding balance will be refinanced into the senior term facilities described in Table B.31 below. The outstanding balance in the liquidity facility will be subject to a cash sweep. The establishment terms for the two facilities are outlined in Table B.32 below.

**Table B.32: Senior Bank Debt Facility Refinancings**

	Refinance 1	Refinance 2	Refinance 3	Refinance 4
Date	9/30/2020	9/30/2030	9/30/2040	9/30/2050
Facilities / Instruments which are refinanced	Senior bank facilities PABs issuance	Senior bank facilities	Senior bank facilities	Senior bank facilities
Term Loan Amount	805 million	871 million	1,000 million	972 million
Term of refinancing facilities	10 years	10 years	10 years	10 years
Repayment terms	Bullet repayment at year 10	Bullet repayment at year 10	Amortization commencing year 37 of the concession; bullet repayment at year 10	Amortization until fully repaid in year 47 of the concession
Margin	120 bps	120 bps	120 bps	120 bps
Refinancing Fees Paid	120 bps	120 bps	120 bps	120 bps

	Refinance 1	Refinance 2	Refinance 3	Refinance 4
Purpose	1.Repay current Senior Debt Facilities and PABs issuance 2.Pay issuance costs	1. Repay current Senior Debt Facilities 2.Pay issuance costs	1. Repay current Senior Debt Facilities 2.Pay issuance costs	1. Repay current Senior Debt Facilities 2.Pay issuance costs
Additional Hedging	0%	0%	0%	0%

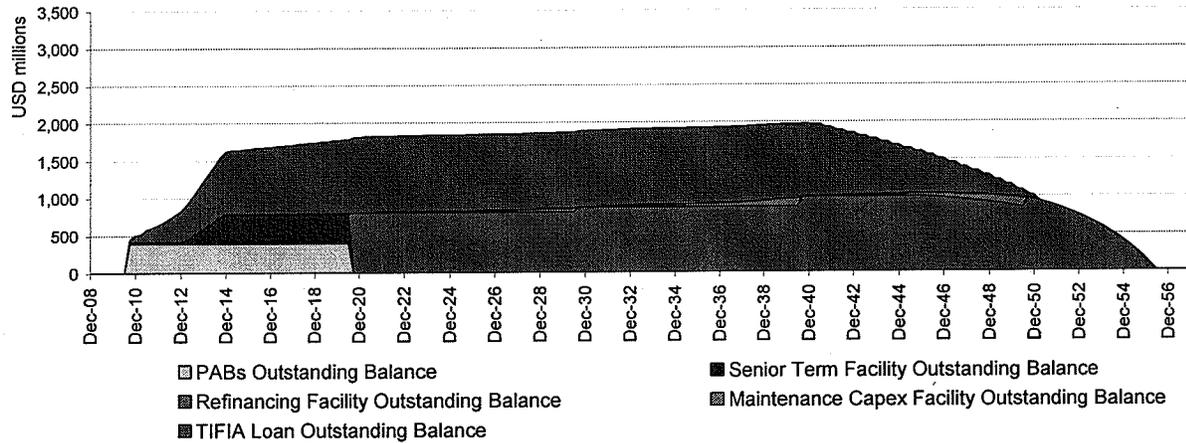
**Table B.33: Maintenance Capex and Liquidity Facility Establishment Terms**

	Refinance 1	Refinance 2	Refinance 3
Date	9/30/2020	9/30/2030	9/30/2040
Maintenance capex facility available balance	\$57 million	\$114 million	\$124 million
Liquidity facility available balance	\$60 million	\$115 million	\$148 million
Establishment Fee	1.20%	1.20%	1.20%
Commitment Fee	40% of Margin	40% of Margin	40% of Margin

## Refinancings

The refinancings described in Table 31 results in the debt profile included in the Financial Proposal as seen below in Figure B.9:

**Figure B.9: Refinancings**

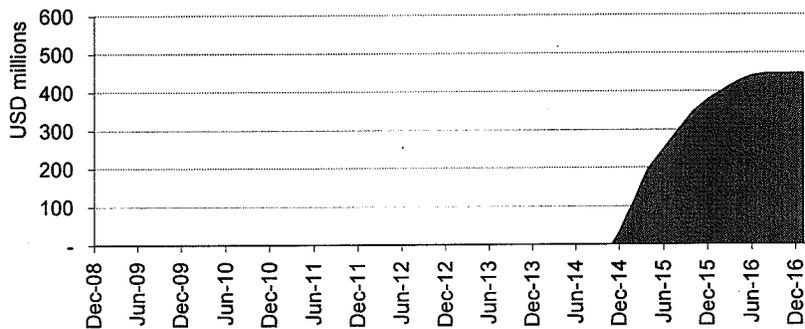


It is important to note that the risk of not achieving this structure and the assumed terms is fully taken by the shareholders as it will impact our targeted equity IRR. This risk has been taken into account when deciding the level of equity return targeted for this Project.

**B.3.6 Public Funds**

The Financing Plan assumes a Public Funds request profile in accordance with the terms set forth in Exhibit C of the ITP. The cumulative Public Funds drawdowns included in the Financing Plan are illustrated below in Figure B.10.

**Figure B.10: Public Funds Cumulative Requests**



**B.3.7 Proposed Hedging Arrangements**

Consistent with the Consortium’s interest rate benchmarking election, the Financing Plan assumes that a USD LIBOR swap with a maturity of 30 years from financial close shall be executed at financial close to hedge the interest rate risk associated with the Term Facility and the Maintenance Capex Facility and the refinancings of those facilities for up to 30 years. The swap will be tailored to the drawdown profiles of the facilities. The hedge will have an aggregate stated notional amount of 100% of the principal amount expected to be outstanding in each period, assuming no amortization of the facilities over the life of the hedge.

Unhedged senior bank debt amounts (eg. new senior bank debt drawn to refinance PABs, or fund maintenance capital expenditure after the ten year anniversary of financial close; and bank debt amounts outstanding greater than 30 years after financial close) are assumed to bear interest at the base rate of 5.6%.

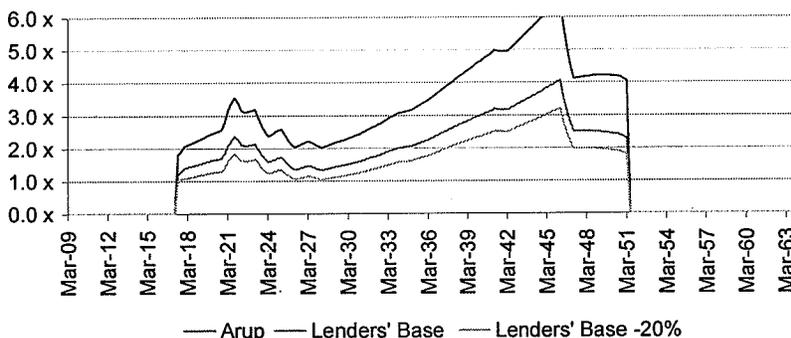
Note that the PABs will be issued with a fixed coupon and therefore no interest rate hedging is necessary in respect of the PABs.

**B.3.8 Traffic Scenarios**

The base case traffic and revenue assumptions and estimates underlying the Financial Proposal are based upon a network model prepared by Arup North America Ltd ("Arup") and contained in the Traffic and Revenue report provided in this Financial Proposal (Escrowed Materials-Assumptions Book). Additionally, Hatch Mott conducted a review of the Arup Traffic and Revenue forecasts on behalf of the lenders and produced the Lenders' base case traffic and revenue estimates ("Lenders' Base") which we contained in Hatch Mott report provided in this Financial Proposal (Escrowed Materials-Assumptions Book).

The Financing Plan has been designed to be able to withstand reasonable stresses to the traffic and revenue profile. A comparison of the coverage ratios for the life of the loans in Figure B.11 indicate that the financing structure produces at least a 1.0x mandatory debt service coverage even under a 20% stress case below the Lenders' Base case.

**Figure B.11: Senior and Mandatory TIFIA Debt Service Coverage Ratios under Revenue Cases**



**B.3.9 Indicative Credit Ratings Letter**

The indicative credit rating letter can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 7 of this Financial Proposal. An investment grade rating of senior debt is required under the terms of the TIFIA Loan.

**B.3.10 Lenders' Traffic and Revenue & Technical Due Diligence Reports**

Lenders' traffic and revenue and technical due diligence reports can be found in the assumption book within the Escrowed Financial Proposal.

**B.3.11 Expected Timetable to Financial Close**

A detailed timetable to Financial Close can be found in Section B6.

## **B.3.12 Lender Support Letters**

Lender Support Letters can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 2 of this Financial Proposal.

## **B.3.13 TIFIA Commitment Letter**

The TIFIA conditional commitment, comprising of a letter and the TIFIA Conditional Term Sheet can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 5 of this Financial Proposal.

## **B.4 Details of Equity Source and Equity Participant Letters**

### **B.4.1 Identity of the Investors**

The Developer will be directly or indirectly owned by two investors, Cintra and Meridiam.

#### **Cintra Concesiones de Infraestructuras de Transporte S.A.**

Cintra is one of the largest private-sector developers of transport infrastructure, with committed equity investments of more than \$3 billion. Formed in the Kingdom of Spain, Cintra is a publicly held company listed in Madrid's Stock Exchange, headquartered in Madrid with subsidiaries in three continents, including a branch office for the development of US operations in Austin, Texas.

Cintra currently manages 22 toll highways (more than 1,700 miles/2,735km) in Spain, Portugal, Ireland, Italy, Greece, Chile, Canada (407 ETR) and the US (Chicago Skyway and Indiana Toll Road, and will soon begin construction on SH 130 segments 5&6 in Texas), and has significant cumulative experience in bidding concession projects all over the world.

Cintra has extensive experience and infrastructure leadership in Texas. In 2005, Cintra together with a US construction firm, signed a Comprehensive Development Agreement (CDA) in Texas to develop the High Priority Trans Texas Corridor (TTC-35). Recently, Cintra was awarded segments 5 and 6 of State Highway 130 in Texas, the US' first 100% privately funded Greenfield project. Cintra has also been able to achieve financial close on the SH-130 concession under current market conditions and having as sources \$430M of TIFIA loan proceeds, \$685M of Senior Bank Debt and \$197M in Equity.

Cintra has a strong track record in bidding processes and management experience in many of the selected markets and technical experience in the execution and integration of the different facets of the infrastructure concessions business, including construction, land expropriations, environmental impacts, financing, negotiating agreements, operations and maintenance, and traffic forecasting. It also has the financial capacity to obtain capital financing for projects, as well as the ability to develop innovative financial structures and to use different financial instruments.

#### **Meridiam Infrastructure Finance**

Meridiam is a fully owned investment subsidiary of Meridiam Infrastructure S.C.A. SICAR ("Meridiam Fund"). Meridiam Fund is a €600 million (approx. \$900 million) infrastructure fund with a 25 year life set up in order to be able to buy and hold assets for the long term. Meridiam Fund focuses exclusively on Public Private Partnership ("PPP") projects in OECD countries, investing an array of equity, subordinated debt, mezzanine debt and hybrid instruments in the

transportation, public sector facilities and accommodation, and environmental sectors or related services fields in North American and the EU.

Since inception in 2006, Meridiam Fund has invested in the following four PPP assets: the Limerick Tunnel in Ireland (awarded 2006 European PPP Deal of the Year by Project Finance Magazine and the 2006 Project Finance Deal of the Year by the International Financial Law Review), the Vienna A5 Ostregion in Austria (awarded 2006 Bond Deal of the Year by Infrastructure Journal), a series of primary health care facilities procured under the UK LIFT scheme, and the A2 Motorway in Poland.

The Meridiam team has the experience and ability to add value throughout the project lifecycle as active developers, investors and asset managers. The team is comprised of a number of leading figures in the global infrastructure and PPP markets. The Meridiam team is led by Thierry Déau and Julia Prescott, two professionals with considerable experience of all aspects of infrastructure financing and a strong network of relationships. The team has a combined experience of investment in, and management of, PPP projects in excess of 60 years. Some of the team members held leading roles in the early PPP markets (UK and Australia) in the mid-1990s. Projects closed by team members include: A2 Motorway (Poland), Budapest Airport (Hungary), SCUT Interior Norte motorway (Portugal), Brussels waste-water treatment (Belgium), First tranche French prisons (France), Leslys Express Tramway Lyon (France), Brussels Airport (Belgium), Manila North Tollway (Philippines), Daejeon Riverside Expressway (Korea), South Australian ports (Australia), A28 and A41 Motorway (France), Leeds 7 schools (UK), Hexham Hospital (UK), Tubelines London Underground (UK), Eje Aeropuerto/Palma Manacor (Spain), Rathcormac/Fermoy road (Ireland). Since 2000, the team has participated in projects with an aggregate value of €4.6 billion (approximately \$6.9 billion) and held key roles in eight road/tunnel/bridge projects in the EU, the Americas and the Asia-Pacific region.

**B.4.2 Amount and Timing of Shareholders' Subscriptions**

The equity investors will contribute up to \$684 million in total prior to completion of construction of the Project, as set out in the following Table B.33:

**Table B.34: Equity Contribution by Equity Sponsor**

Equity Sponsor	\$ million
Cintra	376
Meridiam	308
Total	684

The timing of the equity investors' capital contributions to the Developer will be determined via negotiations with lenders in the period prior to financial close. The Financial Model assumes that equity will be contributed pro rata with funds sourced from debt financiers.

The sponsors are currently contemplating the possibility of enhancing the equity contributions by implementing subordinated debt solutions, such as mezzanine debt, to introduce flexibility and ease external borrowing. Such solutions would therefore require further assessment until Financial Close, as the financing structure advances.

There shall be no further equity contributions after the completion of construction.

## B.4.3 Terms and Conditions of Subscription

### Commitment of Funds

Cintra has provided a letter evidencing its commitment to provide the equity funding described above (Volume 1, Attachments to B, C, D, E, & F, Attachment 1 of this Financial Proposal). Cintra's provision of this commitment has been approved by its Board of Directors. On June 24, 2008 a meeting of the Board of Directors of Cintra was held at the Corporation's corporate offices which validly passed by unanimous written consent the approval of the participation in the Proposal for the concession to develop, design, construct, finance, operate and maintain the IH635 Managed Lanes Project in Texas, U.S.A., in accordance with the proposal documentation, including the creation, as the case may be, of the pertinent companies. A certificate signed by Javier Romero Sullá, Secretary of the Board of Directors, certifying these items as well as the sufficiency of the approval, is included herein and can be located under Volume 1, Tab B of the Technical Proposal. Attached to such certificate we include the following supporting documentation: a certificate issued by the Company Registry (Registro Mercantil de Madrid) identifying all of the Directors and the Officers of the Corporation and their respective offices, a copy of Public Deed number 2.164 appointing Javier Romero Sullá as secretary of the Board and Mr. Orol's power of attorney evidencing authority of such individual to represent Cintra in respect of the Proposal.

Meridiam has provided a letter evidencing its commitment to provide the equity funding described above (Volume 1, Attachments to B, C, D, E, & F, Attachment 1 of this Financial Proposal). Meridiam's provision of this commitment has been approved by its Investment Committee. On July 17, 2008, the Board of Managers of Meridiam Infrastructure Managers S.A.R.L. approved Meridiam's participation in the IH635 Managed Lanes Project in all respects including approval of the content of the Financial Proposal and submittal of a binding offer. A certificate signed by Thierry Déau, General Manager of Meridiam Infrastructure Managers S.A.R.L and Chairman of the Board of Managers is enclosed herein and can be located within Volume 1, Tab B of the Technical Proposal. Attached to such certificate we include the following documentation: a copy of a written resolution taken by the sole shareholder of Meridiam Infrastructure Finance S.A.R.L reducing the number of managers of the company to one as well as appointing Mr. Deau as sole manager of the Company and Mr. Aiello's power of attorney evidencing authority of such individual.

The Sponsors' commitment is further evidenced by their provision of the Proposal Security required under the terms of the ITP.

### Terms and conditions of subscription

The capital of the company shall be represented by units. The Members shall participate in the rights, benefits, obligations and liabilities within the Company on the following basis as in Table B.34:

**Table B.35: Units of Membership Participation**

Member	Percentage Interest
Cintra	55%
Meridiam	45%

Additionally, the Dallas Police and Fire Pension System have an option for up to a 10% equity participation which they can exercise after concluding due diligence.

The Members will share in all profits, losses and other items of the Company according to their respective Percentage Interests. All distributions shall be made according to the Members' Percentage Interests.

The equity investors' nominal, after-tax internal rate of rate ("Equity IRR") under the Financing Plan is 12.76%.

The Equity IRR is calculated from the dates on which actual funding to the Developer occurs (i.e. on a cash basis).

#### **B.4.4 Certified Copies of Board Minutes**

On June 24, 2008 a meeting of the Board of Directors of Cintra was held at the Corporation's corporate offices which validly passed by unanimous written consent the approval of the participation in the Proposal for the concession to develop, design, construct, finance, operate and maintain the IH635 Managed Lanes Project in Texas, U.S.A., in accordance with the proposal documentation, including the creation, as the case may be, of the pertinent companies. A certificate signed by Javier Romero Sullá, Secretary of the Board of Directors, certifying these items as well as the sufficiency of the approval, is included herein and can be located under Volume 1, Tab B of the Technical Proposal.

On July 17, 2008, the Board of Managers of Meridiam Infrastructure Managers S.A.R.L. approved Meridiam's participation in the IH635 Managed Lanes Project in all respects including approval of the content of the Financial Proposal and submittal of a binding offer. A certificate signed by Thierry Déau, General Manager of Meridiam Infrastructure Managers S.A.R.L and Chairman of the Board of Managers is enclosed herein and can be located within Volume 1, Tab B of the Technical Proposal.

#### **B.4.5 Letters of Commitment from Equity Participants**

Letters from the Equity Participants evidencing their commitment to provide equity funding can be found in Volume 1, Attachments to B, C, D, E, & F, Attachment 3 of this Proposal.

#### **B.5 Financial Advisor Letter**

The Consortium has received a Financial Advisor Letter provided by Macquarie Capital (USA) Inc. ("MCUSA") in relation to the Financing Plan (Volume 1, Attachments to B, C, D, E, & F, Attachment 4 of this Financial Proposal).

#### **B.6 Schedule for Commercial and Financial Close**

##### **B.6.1 Schedule for Commercial Close**

The Consortium is experienced in managing complex transactions and has detailed a planning process that will ensure clear communication between the parties to achieve commercial close and then financial close in an efficient and timely manner.

Following conditional award, the Consortium expects to call a meeting (the "Commercial Close Co-ordination Meeting") with the requisite parties to outline the steps required to achieve commercial close within 61 days as required by the ITP. Table B.35 below lists the parties and their respective roles during the period to commercial close:

**Table B.36: Parties and Respective Roles to Commercial Close**

<b>Role</b>	<b>Party</b>
Project sponsor	TxDOT

Role	Party
TxDOT financial advisors	KPMG, Goldman Sachs
TxDOT counsel	Nossaman Guthner Knox & Elliott LLP ("Nossaman")
Developer	Developer
Developer financial advisor	MCUSA
Developer counsel	White & Case
Developer Texas counsel	Bracewell & Giuliani LLP ("Bracewell")
Tolling services provider	North Texas Tolling Authority ("NTTA")
DB Contractor	Grupo Ferrovial / W.W. Webber Joint Venture ("Ferrovial / Webber")
Independent Engineer	To be determined

The purpose of the Commercial Close Co-ordination Meeting will be to explain the timetable to commercial close, agree on a commercial close checklist, allocate parties and individuals to working groups and define roles and functions of the working groups to accomplish the key milestones to commercial close. Additionally, the Consortium envisages the creation of an Oversight Committee that meets regularly in order to monitor progress and facilitate negotiations between TxDOT and the Developer during the period leading to commercial close. The working groups that the Consortium envisages will have key deliverables which are outlined in Table B.36:

**Table B.37: Working Groups and Key Deliverables to Commercial Close**

Working Group	Members	Deliverables
<b>Oversight Committee</b>	TxDOT Developer	<ul style="list-style-type: none"> <li>▪ Oversight of process to commercial close</li> <li>▪ Conduct progress and monitoring sessions</li> <li>▪ Resolution of escalated issues from working groups</li> </ul>
<b>Primary agreements</b>	TxDOT Nossaman Developer White & Case Bracewell NTTA Ferrovial / Webber Independent Engineer MCUSA	<ul style="list-style-type: none"> <li>▪ Conformed CDA</li> <li>▪ Direct Agreement with DB Contractor</li> <li>▪ Tolling Services Agreement</li> <li>▪ Independent Engineer Agreement</li> <li>▪ Intellectual Property Escrow Agreement</li> <li>▪ Lease, Memorandum of Lease, and Lease Escrow Agreement</li> <li>▪ Project Trust Agreement</li> <li>▪ Project Trust and Security Instruments</li> <li>▪ Tri-Party Agreement</li> </ul>
<b>Project management documents</b>	TxDOT Nossaman Developer White & Case Ferrovial / Webber	<ul style="list-style-type: none"> <li>▪ Project Management Plan</li> <li>▪ DBE Performance Plan</li> <li>▪ Evidence of license requirements</li> <li>▪ Commitments for payment and performance security</li> </ul>
<b>DB Agreement</b>	Developer White & Case Ferrovial / Webber	<ul style="list-style-type: none"> <li>▪ DB Agreement</li> <li>▪ DB Guarantees</li> </ul>
<b>Developer Closing Deliverables</b>	TxDOT Nossaman Developer White & Case Bracewell	<ul style="list-style-type: none"> <li>▪ Evidence of required insurances</li> <li>▪ Evidence of the approval of the final form of the CDA and due authorization, execution, delivery and performance of the CDA by the Developer</li> <li>▪ Certification regarding NTTA Communications</li> <li>▪ Financial close security</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Legal opinion from counsel to Developer regarding organization / authorization / execution</li> <li>▪ Legal opinion from counsel to Developer regarding qualification to do business / enforceability</li> </ul>
<b>TxDOT Closing Deliverables</b>	TxDOT Nossaman Developer White & Case Bracewell	<ul style="list-style-type: none"> <li>▪ Office of General Council opinion on ability to enter into CDA and Direct Agreement</li> <li>▪ Office of Attorney-General determination opinion that proposed CDA is legally sufficient</li> </ul>

The working groups will be responsible for ensuring the documentation and agreements associated with each working group can be delivered according to a time table to be discussed and agreed at the Commercial Close Co-ordination Meeting. A draft of that time table appears as Table B.37 below.

**Table B.38: Time Table to Commercial Close**

	Days from conditional award	Days to Commercial Close	Date
Commercial Close Co-ordination Meeting	1	59	27-Feb-09
Issue first draft Primary Agreements	6	55	4-Mar-09
Delivery of evidence of authority to transact business in Texas (e.g. Good Standing Certificates), for all members of Developers' team final organization docs for Developer and each Member of Developer	8	53	6-Mar-09
Increase proposal security to \$75m	8	53	6-Mar-09
Comments on first draft Primary Agreements	11	50	9-Mar-09
Meeting on Primary Agreements	15	46	13-Mar-09
Issue second draft Primary Agreements	19	42	17-Mar-09
Issue first draft Project Management Documents	20	41	18-Mar-09
Comments on second draft Primary Agreements (if any)	25	36	23-Mar-09
Comments on first draft Project Management Documents	26	35	24-Mar-09
Second meeting on Primary Agreements (if needed)	29	32	27-Mar-09
Last day for TxDOT to deliver certain agreements and reports to Legislative Budget Board and State Auditor	29	32	27-Mar-09
Meeting on Project Management Documents	32	29	30-Mar-09
Issue third draft Primary Agreements (if required)	33	28	31-Mar-09
Issue draft TxDOT Closing Deliverables	35	26	2-Apr-09
Delivery of second draft Project Management Documents	36	25	3-Apr-09

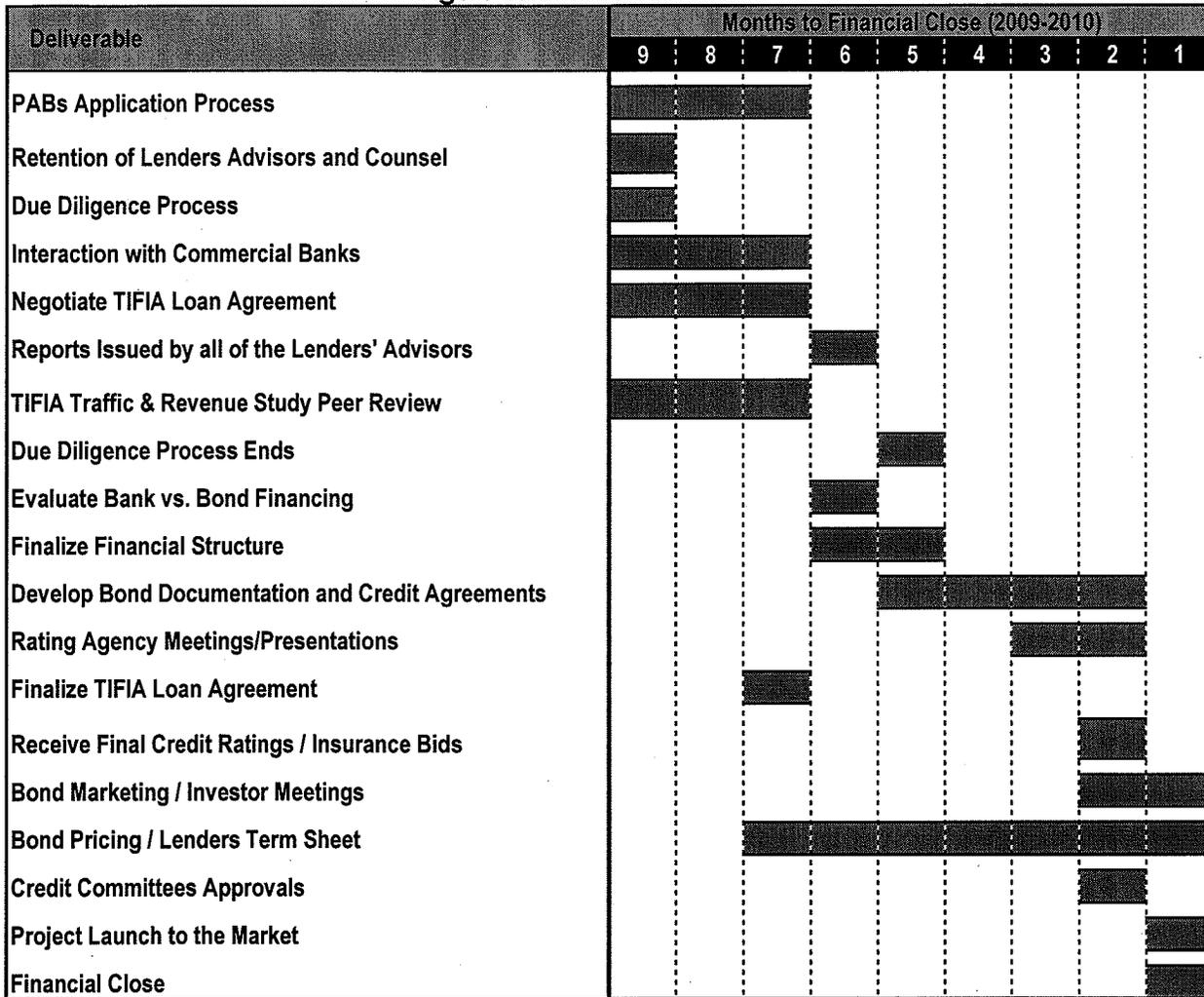
	Days from conditional award	Days to Commercial Close	Date
Delivery of first draft of Developer Closing Deliverables	39	22	6-Apr-09
Delivery of final form DB contract to TxDOT	41	20	8-Apr-09
Comments on TxDOT Closing Deliverables	41	20	8-Apr-09
Comments on second draft Project Management Documents (if any)	42	19	9-Apr-09
Comments on first draft of Developer Closing Deliverables	46	15	13-Apr-09
Receive final TxDOT Closing Deliverables	47	14	14-Apr-09
Issue final Primary Agreements	49	12	16-Apr-09
Issue final Developer Closing Deliverables	49	12	16-Apr-09
Delivery of final Project Management Documents	50	11	17-Apr-09
Sign off on TxDOT Closing Deliverables	50	11	17-Apr-09
Sign off on Primary Agreements	53	8	20-Apr-09
Sign off on Developer Closing Deliverables	53	8	20-Apr-09
Sign off on Project Management Documents	54	7	21-Apr-09
Delivery of execution copies of the Primary Agreements, Project Management Documents, Developer Closing Deliverables, TxDOT Closing Deliverables and DB Contract	56	5	23-Apr-09
Commercial pre-closing	57	4	24-Apr-09
Commercial close	61	0	28-Apr-09
Final audit report submitted	63	-2	30-Apr-09

### B.6.2 Schedule for Financial Close

Upon conditional award, the Developer intends to reach financial close as quickly as possible, taking into account market conditions and restrictions on the availability of TIFIA budget authority.

An indicative schedule to financial close is outlined in Figure B.12 below:

**Figure B.12: Time Table to Financial Close**



**EXHIBIT 6**

**LIST OF INITIAL FUNDING AGREEMENTS  
AND INITIAL SECURITY DOCUMENTS**

None as of the Effective Date. To be completed at Financial Close.

**Funding Agreements**

**Security Documents**

## EXHIBIT 7

### COMPENSATION TERMS

#### **Part A Concession Payment**

1. Within two Business Days following the Financial Close, Developer shall pay \$0 in good and immediately available funds to TxDOT or the trustee under the Project Trust Agreement for deposit as provided therein. Failure to pay when due shall constitute a material Developer Default.
2. Solely to the extent that TxDOT has issued NTP3, within six months after the earlier of the Service Commencement Date for the Project Segment pertaining to the IH 35E Capacity Improvement Section or the Service Commencement Deadline, Developer shall pay to TxDOT \$0 in good and immediately available funds. Failure to pay when due shall constitute a material Developer Default.
3. [RESERVED]
4. For federal income tax purposes, the Concession Payment is allocated as follows: Not Applicable

#### **Part B [RESERVED]**

#### **Part C Revenue Payments**

##### 1. General

Subject to Section 17.6.3 of the Agreement, Developer shall pay to TxDOT the amounts determined in accordance with this Part C of Exhibit 7 (the "Revenue Payment Amount") and interest earned on such amounts prior to distribution at the same rate as the blended average rate earned on the Toll Revenue Account.

##### 2. Calculation of Revenue Payment Amount

- 2.1 Subject to Sections 2.2, 2.3 and 3, the Revenue Payment Amount shall be calculated at the end of each calendar year, commencing at the end of the third full calendar year following the first Service Commencement Date (e.g., if the first Service Commencement Date is March 1, 2011, commencing at the end of the 2014 calendar year) for the cumulative period thereto, and continuing until the end of the Term, and shall equal the sum of the following minus all Revenue Payment amounts, if any, paid in previous calendar years pursuant to this Section 2.1:

- 2.1.1 The portion of the cumulative Toll Revenues to date within Band 1, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus

- 2.1.2 The portion of the cumulative Toll Revenues to date within Band 2, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus
- 2.1.3 The portion of the cumulative Toll Revenues to date within Band 3, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus
- 2.1.4 The portion of the cumulative Toll Revenues to date within Band 4, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1; plus
- 2.1.5 The portion of the cumulative Toll Revenues to date within Band 5, as shown in Attachment 1 to this Exhibit 7, multiplied by the applicable Revenue Payment percentage for such Band as shown in Attachment 1.
- 2.2 The Band values are stated on a calendar year basis, starting with the calendar year in which the first Service Commencement Date occurs. In the calculation of revenue sharing, if the operating period in the first or last calendar year is less than a full calendar year, the applicable amounts of the Revenue Band floors and ceilings will be adjusted pro rata based on the number of operating days. For the last calendar year of the Term, Toll Revenues shall include those revenues that are accrued or earned but not yet received in such calendar year.
- 2.3 If TxDOT issues NTP3, then Attachment 1 to this Exhibit 7 shall be deemed automatically replaced with Table 2 of Proposal Form T – 5 Sections as set forth in the Proposal. The Parties shall promptly execute an amendment to the Agreement to confirm substitution of such Table 2 for Attachment 1 to this Exhibit 7, but this provision shall be effective even if the Parties fail to execute such amendment.

### 3. Payment Procedures

- 3.1 The Revenue Payment Amount shall be payable to TxDOT according to the following procedures.
  - 3.1.1 Within 15 days after the end of each calendar year or partial calendar year during the Term, commencing at the end of the third full calendar year following the first Service Commencement Date for the cumulative period thereto, Developer shall deliver to TxDOT (a) a written preliminary calculation of the Revenue Payment Amount in accordance with Part C, Section 2.1 and (b) subject to Section 3.3 below and Section 17.6.3 of the Agreement, full payment of the Revenue Payment Amount as so calculated.
  - 3.1.2 Within 90 days after the end of each calendar year or partial calendar year during the Term, commencing at the end of the third full calendar year following the first Service Commencement Date for the cumulative

period thereto, Developer shall deliver to TxDOT (a) a written final calculation of the Revenue Payment Amount in accordance with Part C, Section 2.1, (b) an audited financial statement prepared by a reputable independent certified public account according to U.S. GAAP, consistently applied, setting forth the total Toll Revenues for the subject calendar year, and (c) subject to Section 3.3 below and Section 17.6.3 of the Agreement, either payment of any additional Revenue Payment Amount as so calculated or a written request for any refund of any prior overpayment of the Revenue Payment Amount for the subject calendar year, as so calculated.

3.1.3 TxDOT shall have up to 120 days after receipt of the items set forth in Part C, Section 3.1.2 to dispute Developer's calculation of the Revenue Payment Amount or to request further reasonable clarification or amendment to the calculation. Developer shall deliver to TxDOT such reasonable clarification or amendment within 30 days after receipt of TxDOT's written request therefor. If TxDOT does not agree with the calculation of the Revenue Payment Amount, the Dispute shall be resolved according to the Dispute Resolution Procedures.

3.1.4 Upon final determination of the Revenue Payment Amount, to the extent the result is a positive figure, subject to Section 3.3 below and Section 17.6.3 of the Agreement, Developer shall immediately pay to TxDOT the additional amount owing, together with interest thereon, commencing 90 days after the end of the calendar year or partial calendar year for which it was due until the date paid, at a floating rate equal to the LIBOR in effect from time to time.

3.1.5 Upon final determination of the Revenue Payment Amount, to the extent the result indicates an overpayment to TxDOT, TxDOT shall immediately refund the overpayment to Developer, together with interest thereon, commencing 30 days after TxDOT receives the written final calculation and audited financial statement pursuant to Section 3.1.2 until the date paid, at a floating rate equal to the LIBOR in effect from time to time.

3.2 Developer's payment obligations under this Part C shall survive expiration or any earlier termination of the Term.

3.3 Notwithstanding anything to the contrary in this Part C, Developer shall have the option, in accordance with this Section 3.3, to defer any amounts otherwise owing to TxDOT under this Part C during the first 10 years after the first Service Commencement Date upon advance written notice to TxDOT of Developer's election to defer payment of any such amounts in accordance with this Section 3.3. Any amounts deferred under this Section 3.3 shall be due no later than the date that is 10 years after the first Service Commencement Date with interest at a floating rate equal to the LIBOR in effect from time to time, provided that upon termination of the Agreement for any reason, any such amounts plus interest shall be due on the date of termination. Developer shall provide TxDOT with a written statement in form acceptable to TxDOT on December 31 of any year that Developer has deferred payment of any amounts under this Section 3.3 of each amount deferred and the amount of interest owing thereon.

#### 4. Federal Income Tax Purposes

For U.S. federal income tax purposes, the Revenue Payment Amount is allocated as follows: between the right to toll the Managed Lanes and rent for Project Right of Way based on the relative fair market values of such rights as of the Effective Date, which are 73.96% and 26.04%, respectively.

#### **Part D Refinancing Gain Payment; Gain from Certain Initial Financings**

1. Developer shall pay to TxDOT (a) for a Refinancing using credit assistance under the TIFIA commitment for the Project obtained pursuant to TxDOT's application under the TIFIA credit assistance program, the greater of (i) 75% of any Refinancing Gain from a Refinancing using credit assistance under the TIFIA commitment for the Project obtained pursuant to TxDOT's application under the TIFIA credit assistance program (as it may be extended whether by application of TxDOT or Developer), as well as from any changes Developer obtains to the TIFIA terms under TxDOT's application (such as but not limited to facility size, interest rate spread margins, repayment terms or overall debt facility duration compared to the Base Case Financial Model) or (ii) any Compensation Amount TxDOT previously paid with respect to a Compensation Event under clause (g) of the definition of Compensation Event, and any obligation of TxDOT to pay a Compensation Amount under such clause after such a Refinancing shall cease and be deemed fully released upon such a Refinancing, (b) 75% of any Refinancing Gain from a Refinancing using PABs under the PABs allocation for the Project obtained pursuant to TxDOT's application to the U.S. Department of Transportation (as it may be extended whether by application of TxDOT or Developer), as well as from any changes Developer obtains to the PABs terms under TxDOT's application (such as but not limited to facility size, interest rate spread margins, repayment terms or overall debt facility duration compared to the Base Case Financial Model) and (c) 50% of any Refinancing Gain from a Refinancing not covered under clause (a) or (b) above. The foregoing shall not apply, however, if such Refinancing is an Exempt Refinancing.
2. TxDOT's portion of the Refinancing Gain shall be calculated as if realized entirely in the year in which the Refinancing occurs and Developer shall pay to TxDOT TxDOT's portion of the Refinancing Gain concurrently with the close of the Refinancing; provided, however, if Developer demonstrates that it will only be able to actually make Distributions on account of such Refinancing Gain over future years, then (a) the calculation of the Refinancing Gain shall be made on a Net Present Value basis (as such term is defined under the definition of Refinancing Gain) and (b) TxDOT shall reasonably approve, and the Parties shall set forth in writing, a payment schedule spreading payments of such portion of the Refinancing Gain over such future years corresponding with the anticipated timing of such future Distributions such that these payments yield the same Net Present Value to TxDOT. Notwithstanding any such payment schedule, the Net Present Value of the unpaid amount shall be due and payable in full to TxDOT upon any failure to pay a scheduled payment when due, if such failure is not cured within the cure period set forth in Section 17.1.2.3 of the Agreement plus (if applicable) the cure period available to then-existing Lenders under Section 20.4.2 of the Agreement.
3. The intention is to share in incremental increases in Distributions above the Base Case Financial Model projections of Distributions resulting solely from the initial financing and Refinancings. Among other things, the Parties shall (a) include in Distributions under factor A of the Refinancing Gain definition changes to any Distributions made prior to the date of Refinancing or projected to be made, resulting from changes to the financing terms

(including changes to equity funding arrangements resulting therefrom) as compared to the Base Case Financial Model, and (b) adjust Distributions under factor A of the Refinancing Gain definition to reflect changes in equity contributions paid or projected to be paid to Developer resulting from changes to the financing terms as compared to the Base Case Financial Model.

4. Concurrently with delivering to TxDOT draft proposed Funding Agreements and Security Documents in connection with any such Refinancing, Developer shall also deliver to TxDOT Developer's calculation of the anticipated Refinancing Gain, if any, together with any back-up documentation for its calculation.
5. If the Project Plan of Finance does not include TIFIA funding but Developer closes with TIFIA financing at Financial Close, or if the Project Plan of Finance does not include PABs funding but Developer closes with PABs financing at Financial Close, then Developer shall pay to TxDOT (a) 75% of the incremental benefit realized (i.e., incremental increase in Distributions) due to the use of credit assistance under the TIFIA commitment for the Project obtained pursuant to TxDOT's application under the TIFIA credit assistance program (as it may be extended whether by application of TxDOT or Developer), and (b) 75% of any incremental benefit realized due to the use of PABs under the PABs allocation for the Project obtained pursuant to TxDOT's application to the U.S. Department of Transportation (as it may be extended whether by application of TxDOT or Developer). If the Project Plan of Finance includes TIFIA and/or PABs funding and Developer changes the TIFIA and/or PABs terms (such as but not limited to facility size, interest rate spread margins, repayment terms, or overall debt facility duration) prior to Financial Close, TxDOT will be entitled to receive 75% of the net incremental benefit realized due to these changes. Such incremental benefit under (a) or (b) shall be calculated and payable in the same manner as Refinancing Gain under Section 2 of this Part D.
6. For U.S. federal income tax purposes, the Refinancing Gain payment to TxDOT is allocated as follows: between the right to toll the Managed Lanes and rent for Project Right of Way based on the relative fair market values of such rights as of the Effective Date, which are 73.96% and 26.04%, respectively.

## **Part E Payment of Public Funds**

### **1. Public Funds Amount**

TxDOT shall pay to Developer, as reimbursement pursuant to Section 2.2.2 of the Agreement, the amount of \$445,000,000 (the "Public Funds Amount") in accordance with this Part E. Subject to potential Compensation Events, the Public Funds Amount is not subject to change for any reason whatsoever, except the market interest rate adjustment described in Section 4.1.4.5 of the Agreement. Developer's achievement of Financial Close shall be a condition precedent to Developer receiving compensation under this Part E.

### **2. Draft Payment Request**

- 2.1 Developer shall submit a draft Payment Request to TxDOT and the Independent Engineer at a maximum frequency of once every three months. Developer shall submit each draft Payment Request no earlier than seven days following the end of each three-month period. Developer shall not submit the first draft Payment Request earlier than three months following NTP2.

2.2 The Payment Request shall include one hard copy and one electronic copy of a cover sheet, a listing of Completed Payment Activities, the three corresponding Progress Reports for the period covered by the Payment Request (see Section 2.1.1.2.5 of the Technical Provisions), a certificate and supporting documents, as follows:

2.2.1 The cover sheet shall contain:

- Project number and title;
- Invoice number (numbered consecutively starting with “1”);
- Period covered by the Payment Request (inclusive calendar dates);
- Amount of the Public Funds Amount paid and Payment Request Amount;
- Maximum amount payable based on the Maximum Payment Curve;
- Total additional amount remaining to be paid by TxDOT;
- Authorized signature and title of signatory; and
- Date that the Payment Request was signed.

2.2.2 The listing of Completed Payment Activities shall be grouped by WBS and contain:

- Payment Activity ID;
- Payment Activity description;
- Payment Activity value set forth on the Schedule of Values;
- Total earned based on the Schedule of Values for the three-month period at WBS Level II; and
- Total earned based on the Schedule of Values for the Project to date.

2.2.3 The certificate shall be in the form included as Attachment 2 to this Exhibit 7, with no additions or deletions other than those approved by TxDOT.

2.2.4 Supporting documents, to be determined under Section 2.3.

2.3 Sample formats for the Payment Request cover sheet and listing of Completed Payment Activities are shown in Attachment 2 to this Exhibit 7. Developer may present variations to these formats for TxDOT approval at least 15 days prior to the submittal of the first Payment Request. Once TxDOT has approved the formats, the formats shall not change unless approved by TxDOT prior to submittal to TxDOT. Developer shall obtain TxDOT's approval of the

requirements for the supporting documents which are to be included with the Payment Request within 45 days after issuance of NTP2.

- 2.4 Subject to Section 4.4 of this Part E, the "Payment Request Amount" will be determined as follows:

$$\left\{ \left( \sum CPA_1 \right) + \left[ \frac{(PFA - \$100M)}{(\sum PC - \$100M)} \times (\sum CPA_2) \right] \right\} - \text{Previously Paid}$$

Where:

$\sum CPA$  = Sum of Completed Payment Activities

When  $\sum CPA \leq \$100M$ ,  $\sum CPA_1 = \sum CPA$  and  $\sum CPA_2 = 0$

When  $\sum CPA > \$100M$ ,  $\sum CPA_1 = \$100M$  and  $\sum CPA_2 = \sum CPA - \$100M$

PFA = \$445,000,000

$\sum PC = \$2,076,083,589$

Previously Paid = Sum of previous payments in accordance with Section 4 of this Part E

Partially completed Payment Activities are not eligible for payment.

### 3. Payment Request Review and Progress Status Meetings

- 3.1 Developer shall schedule and hold Payment Request review and progress status meeting(s) with TxDOT and the Independent Engineer within seven days after it submits the draft Payment Request. The Payment Request review and progress status meetings shall address and finalize the following:

3.1.1 Actual activity start dates, finish dates and forecast dates.

3.1.2 Total earned based on the Schedule of Values for the three-month period and for the Project to date.

3.1.3 Incorporation of and summary list of all approved Change Orders.

3.1.4 Critical Path(s) and analysis of potential performance areas.

3.1.5 Written summary of actions that are either in consideration or are being taken to minimize areas of potential impact or concerns.

- 3.2 Upon approval by TxDOT, TxDOT and Developer shall sign the draft Payment Request indicating that it has been approved.

### 4. Payment Request and Payment

- 4.1 Within seven days after each Payment Request review and progress status meeting, Developer shall submit to TxDOT the Payment Request based on the approved draft Payment Request.

- 4.2 No Payment Request will be processed until TxDOT receives a complete Payment Request in compliance with the requirements of this Part E.

- 4.3 Within 30 days after receipt by TxDOT of each complete Payment Request, TxDOT will pay Developer the amount of the Payment Request approved for payment, subject to the Maximum Payment Curve (see Section 4.4 of this Part E), less any amounts owing to TxDOT by Developer.
- 4.4 Payment of each Payment Request is limited by the cumulative cap on payments as set forth in the Maximum Payment Curve. In other words, at no time will Developer's cumulative total payments of the Public Funds Amount exceed the cumulative total payments permitted by the Maximum Payment Curve. Payment of any amounts included in a Payment Request that are in excess of the maximum aggregate amount payable under the Maximum Payment Curve shall be deferred until such time, if any, that such deferred amounts can be paid without aggregate payments exceeding the Maximum Payment Curve.
- 4.5 If TxDOT receives a copy of a sworn notice of claim from a Claimant that complies on its face with Section 16.2.4.2 of the Agreement, together with a proof of delivery thereof to the Prime Contractor and Collateral Agent, then TxDOT may withhold from any Payment Request to Developer an amount necessary to pay 50% of such claim; provided, however, that in no event shall TxDOT be entitled to withhold under this Section 4.5 an amount greater than 10% of any Payment Request (without taking into account such withholdings), and TxDOT shall not be entitled to withhold any amount that exceeds the 10% limitation from a subsequent Payment Request. For the avoidance of doubt, the cumulative withholdings from Payment Requests shall not exceed 50% of the claim. TxDOT may withhold such amount immediately on receipt of the sworn notice of claim and proof of delivery, without regard to whether the claim is or becomes contested. TxDOT shall release any withheld funds to Developer, without interest, within ten days after (a) receipt of proof of final resolution and discharge of the claim, or (b) payment by TxDOT, or receipt of proof of payment by the Collateral Agent, of the claim out of a P&P Letter of Credit.

5. Payment to Design-Build Contractor

Within ten days after receipt of payment from TxDOT, Developer shall pay the Design-Build Contractor out of the amount paid to Developer with respect to the Design-Build Contractor's work, the amount to which the Design-Build Contractor is entitled. Developer shall, by appropriate agreement with the Design-Build Contractor, require the Design-Build Contractor to make payments to its subcontractors and suppliers in a similar manner. TxDOT shall have no obligation to pay or to see to the payment of money to the Design-Build Contractor or its subcontractors or suppliers, except as may otherwise be required by Law.

6. Payment to Developer for IH 35E Capacity Improvement Section

Within six months after the Service Commencement Date for the Project Segment pertaining to the IH 35E Capacity Improvement Section, TxDOT shall pay to Developer \$190,000,000 in good and immediately available funds.

7. No Waiver

No payments shall be construed as an acceptance of any defective work or improper materials.

## 8. Disputes

Failure by TxDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Developer's obligation to perform under the CDA Documents and Developer shall not cease or slow down its performance under the CDA Documents on account of any such amount. Any dispute regarding such payment shall be resolved pursuant to the Dispute Resolution Procedures.

### **Part F Payment of HOV Discount**

Within 30 days after TxDOT receives all of the monthly reports described in Section G.1.c of Exhibit 4 to the Agreement for each quarter ending on the last day of March, June, September and December during the HOV Discount Period, TxDOT shall pay Developer the total undisputed amount of the HOV discount incurred during the quarter for valid transponder account holders that self-declare (or are otherwise identified) as HOVs or Motorcycles during Peak Periods during the HOV Discount Period. TxDOT reserves the right to adjust any payments for errors in previous payments.

### **Part G Interoperability Fee Adjustment**

1. The "Benchmark Interoperability Rate" is 8%.
2. Developer shall deliver a report to TxDOT and the Independent Engineer in a standardized form acceptable to TxDOT within 10 days following each month, itemizing each Interoperability Fee Developer paid during the month and the amount of any adjustment in connection with such fee under this Part G.
3. If Developer paid total Interoperability Fees in a month that are greater than those it would pay assuming the Benchmark Interoperability Rate, then TxDOT shall pay the difference to Developer within 15 days after TxDOT's receipt of the applicable report.
4. If Developer paid total Interoperability Fees in a month that are less than those it would pay assuming the Benchmark Interoperability Rate, then Developer shall pay the difference to TxDOT within 15 days after the end of the month.

**ATTACHMENT 1 TO EXHIBIT 7**

<b>Band</b>	<b>Revenue Payment Percentage</b>
1	0%
2	12.5%
3	25.0%
4	50.0%
5	75.0%

<b>Year of Operations</b>	<b>Band 1 Floor: Cumulative Toll Revenues from:</b>	<b>Band 1 Ceiling: Cumulative Toll Revenues up to but less than:</b>	<b>Band 2 Floor: Cumulative Toll Revenues from:</b>	<b>Band 2 Ceiling: Cumulative Toll Revenues up to but less than:</b>	<b>Band 3 Floor: Cumulative Toll Revenues from:</b>	<b>Band 3 Ceiling: Cumulative Toll Revenues up to but less than:</b>	<b>Band 4 Floor: Cumulative Toll Revenues from:</b>	<b>Band 4 Ceiling: Cumulative Toll Revenues up to but less than:</b>	<b>Band 5 Floor: Cumulative Toll Revenues from:</b>
1	\$0	\$3,068,880	\$3,068,880	\$3,773,849	\$3,773,849	\$4,596,304	\$4,596,304	\$5,205,965	\$5,205,965
2	\$0	\$20,342,124	\$20,342,124	\$25,015,027	\$25,015,027	\$30,466,680	\$30,466,680	\$34,507,832	\$34,507,832
3	\$0	\$142,831,743	\$142,831,743	\$175,642,420	\$175,642,420	\$213,921,076	\$213,921,076	\$242,295,932	\$242,295,932
4	\$0	\$303,443,025	\$303,443,025	\$373,148,616	\$373,148,616	\$454,470,813	\$454,470,813	\$514,752,598	\$514,752,598
5	\$0	\$476,134,309	\$476,134,309	\$585,509,778	\$585,509,779	\$713,112,937	\$713,112,937	\$807,701,454	\$807,701,454
6	\$0	\$661,828,137	\$661,828,137	\$813,860,372	\$813,860,372	\$991,229,150	\$991,229,150	\$1,122,707,476	\$1,122,707,476
7	\$0	\$861,517,930	\$861,517,930	\$1,059,422,022	\$1,059,422,022	\$1,290,307,314	\$1,290,307,314	\$1,461,455,878	\$1,461,455,878
8	\$0	\$1,076,273,529	\$1,076,273,529	\$1,323,510,329	\$1,323,510,329	\$1,611,949,744	\$1,611,949,744	\$1,825,761,509	\$1,825,761,509
9	\$0	\$1,307,247,178	\$1,307,247,178	\$1,607,542,224	\$1,607,542,224	\$1,957,882,171	\$1,957,882,171	\$2,217,579,003	\$2,217,579,003
10	\$0	\$1,555,679,985	\$1,555,679,985	\$1,913,043,917	\$1,913,043,917	\$2,329,963,421	\$2,329,963,421	\$2,639,013,745	\$2,639,013,745
11	\$0	\$1,822,908,903	\$1,822,908,903	\$2,241,659,481	\$2,241,659,481	\$2,730,195,865	\$2,730,195,865	\$3,092,333,703	\$3,092,333,703
12	\$0	\$2,090,550,285	\$2,090,550,285	\$2,570,782,259	\$2,570,782,259	\$3,131,046,063	\$3,131,046,063	\$3,546,353,356	\$3,546,353,356
13	\$0	\$2,378,936,921	\$2,378,936,921	\$2,925,415,800	\$2,925,415,800	\$3,562,966,716	\$3,562,966,716	\$4,035,564,701	\$4,035,564,701
14	\$0	\$2,689,703,397	\$2,689,703,397	\$3,307,570,177	\$3,307,570,177	\$4,028,405,963	\$4,028,405,963	\$4,562,740,604	\$4,562,740,604
15	\$0	\$3,024,614,684	\$3,024,614,684	\$3,719,415,805	\$3,719,415,805	\$4,530,007,227	\$4,530,007,227	\$5,130,875,115	\$5,130,875,115
16	\$0	\$3,385,576,676	\$3,385,576,676	\$4,163,296,391	\$4,163,296,391	\$5,070,624,993	\$5,070,624,993	\$5,743,201,345	\$5,743,201,345

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling: Cumulative Toll Revenues up to but less than:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling: Cumulative Toll Revenues up to but less than:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling: Cumulative Toll Revenues up to but less than:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling: Cumulative Toll Revenues up to but less than:	Band 5 Floor: Cumulative Toll Revenues from:
17	\$0	\$3,772,900,527	\$3,772,900,527	\$4,639,594,565	\$4,639,594,565	\$5,650,725,279	\$5,650,725,279	\$6,400,247,122	\$6,400,247,122
18	\$0	\$4,193,594,027	\$4,193,594,027	\$5,156,927,918	\$5,156,927,918	\$6,280,803,751	\$6,280,803,751	\$7,113,900,277	\$7,113,900,277
19	\$0	\$4,646,417,782	\$4,646,417,782	\$5,713,772,344	\$5,713,772,344	\$6,959,004,148	\$6,959,004,148	\$7,882,058,333	\$7,882,058,333
20	\$0	\$5,133,825,723	\$5,133,825,723	\$6,313,145,484	\$6,313,145,484	\$7,689,001,760	\$7,689,001,760	\$8,708,884,073	\$8,708,884,073
21	\$0	\$5,658,459,200	\$5,658,459,200	\$6,958,295,445	\$6,958,295,445	\$8,474,752,571	\$8,474,752,571	\$9,598,858,213	\$9,598,858,213
22	\$0	\$6,223,161,294	\$6,223,161,294	\$7,652,718,409	\$7,652,718,409	\$9,320,514,705	\$9,320,514,705	\$10,556,803,679	\$10,556,803,679
23	\$0	\$6,830,992,227	\$6,830,992,227	\$8,400,177,578	\$8,400,177,578	\$10,230,871,495	\$10,230,871,495	\$11,587,911,748	\$11,587,911,748
24	\$0	\$7,485,245,940	\$7,485,245,940	\$9,204,723,564	\$9,204,723,564	\$11,210,756,327	\$11,210,756,327	\$12,697,770,176	\$12,697,770,176
25	\$0	\$8,189,467,952	\$8,189,467,952	\$10,070,716,344	\$10,070,716,344	\$12,265,479,370	\$12,265,479,370	\$13,892,393,483	\$13,892,393,483
26	\$0	\$8,947,474,565	\$8,947,474,565	\$11,002,848,887	\$11,002,848,887	\$13,400,756,354	\$13,400,756,354	\$15,178,255,543	\$15,178,255,543
27	\$0	\$9,763,373,551	\$9,763,373,551	\$12,006,172,584	\$12,006,172,584	\$14,622,739,545	\$14,622,739,545	\$16,562,324,670	\$16,562,324,670
28	\$0	\$10,641,586,412	\$10,641,586,412	\$13,086,124,622	\$13,086,124,622	\$15,938,051,087	\$15,938,051,087	\$18,052,101,380	\$18,052,101,380
29	\$0	\$11,586,872,337	\$11,586,872,337	\$14,248,557,453	\$14,248,557,453	\$17,353,818,886	\$17,353,818,886	\$19,655,659,035	\$19,655,659,035
30	\$0	\$12,604,353,999	\$12,604,353,999	\$15,499,770,507	\$15,499,770,507	\$18,877,715,237	\$18,877,715,237	\$21,381,687,599	\$21,381,687,599
31	\$0	\$13,699,545,310	\$13,699,545,310	\$16,846,544,327	\$16,846,544,327	\$20,517,998,405	\$20,517,998,405	\$23,239,540,725	\$23,239,540,725
32	\$0	\$14,878,381,306	\$14,878,381,306	\$18,296,177,319	\$18,296,177,319	\$22,283,557,373	\$22,283,557,373	\$25,239,286,447	\$25,239,286,447
33	\$0	\$16,147,250,307	\$16,147,250,307	\$19,856,525,300	\$19,856,525,300	\$24,183,960,018	\$24,183,960,018	\$27,391,761,742	\$27,391,761,742
34	\$0	\$17,513,028,539	\$17,513,028,539	\$21,536,044,073	\$21,536,044,073	\$26,229,504,959	\$26,229,504,959	\$29,708,631,254	\$29,708,631,254
35	\$0	\$18,983,117,396	\$18,983,117,396	\$23,343,835,247	\$23,343,835,247	\$28,431,277,363	\$28,431,277,363	\$32,202,450,507	\$32,202,450,507
36	\$0	\$20,565,483,549	\$20,565,483,549	\$25,289,695,560	\$25,289,695,560	\$30,801,209,026	\$30,801,209,026	\$34,886,733,949	\$34,886,733,949
37	\$0	\$22,268,702,119	\$22,268,702,119	\$27,384,169,975	\$27,384,169,975	\$33,352,143,026	\$33,352,143,026	\$37,776,028,188	\$37,776,028,188
38	\$0	\$24,102,003,151	\$24,102,003,151	\$29,638,608,819	\$29,638,608,819	\$36,097,903,325	\$36,097,903,325	\$40,885,990,819	\$40,885,990,819
39	\$0	\$26,075,321,624	\$26,075,321,624	\$32,065,229,293	\$32,065,229,293	\$39,053,369,684	\$39,053,369,684	\$44,233,475,279	\$44,233,475,279
40	\$0	\$28,199,351,303	\$28,199,351,303	\$34,677,181,684	\$34,677,181,684	\$42,234,558,298	\$42,234,558,298	\$47,836,622,179	\$47,836,622,179
41	\$0	\$30,485,602,678	\$30,485,602,678	\$37,488,620,623	\$37,488,620,623	\$45,658,708,590	\$45,658,708,590	\$51,714,957,608	\$51,714,957,608
42	\$0	\$32,946,465,351	\$32,946,465,351	\$40,514,781,796	\$40,514,781,796	\$49,344,376,636	\$49,344,376,636	\$55,889,498,953	\$55,889,498,953
43	\$0	\$35,595,275,170	\$35,595,275,170	\$43,772,064,503	\$43,772,064,503	\$53,311,535,722	\$53,311,535,722	\$60,382,868,789	\$60,382,868,789
44	\$0	\$38,446,386,506	\$38,446,386,506	\$47,278,120,537	\$47,278,120,537	\$57,581,684,585	\$57,581,684,585	\$65,219,417,484	\$65,219,417,484
45	\$0	\$41,515,250,033	\$41,515,250,033	\$51,051,949,834	\$51,051,949,834	\$62,177,963,917	\$62,177,963,917	\$70,425,355,150	\$70,425,355,150
46	\$0	\$44,818,496,467	\$44,818,496,467	\$55,114,003,443	\$55,114,003,443	\$67,125,281,768	\$67,125,281,768	\$76,028,893,682	\$76,028,893,682
47	\$0	\$48,374,026,683	\$48,374,026,683	\$59,486,294,350	\$59,486,294,350	\$72,450,448,527	\$72,450,448,527	\$82,060,399,647	\$82,060,399,647
48	\$0	\$49,576,143,519	\$49,576,143,519	\$60,964,556,154	\$60,964,556,154	\$74,250,875,532	\$74,250,875,532	\$84,099,638,362	\$84,099,638,362

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling: Cumulative Toll Revenues up to but less than:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling: Cumulative Toll Revenues up to but less than:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling: Cumulative Toll Revenues up to but less than:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling: Cumulative Toll Revenues up to but less than:	Band 5 Floor: Cumulative Toll Revenues from:
49+	\$0	\$49,576,143,519	\$49,576,143,519	\$60,964,556,154	\$60,964,556,154	\$74,250,875,532	\$74,250,875,532	\$84,099,638,362	\$84,099,638,362

**ATTACHMENT 2 TO EXHIBIT 7**

IH 635 Managed Lanes Project  
TxDOT Contract No. xx-xxxPxxxx

Invoice No: xx

Invoice Period: \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_

**Payment Request Cover Sheet**  
**(Part E, Section 2.2.1)**

Total Project Construction Costs	\$2,076,083,589.00	
Public Funds Amount		\$445,000,000.00
Sum of Schedule of Values of Completed Payment Activities		\$xxx,xxx,xxx.00
Total amount of Public Funds Amount Paid		\$xx,xxx,xxx.00
Payment Request Amount		\$xx,xxx,xxx.00
Maximum amount payable based on Maximum Payment Curve		\$xxx,xxx,xxx.00
Remaining Project Construction Costs	\$xxx,xxx,xxx.00	
Remaining amount of Public Funds Amount not paid		\$xxx,xxx,xxx.00

IH 635 Managed Lanes Project  
 TxDOT Contract No. xx-xxxPxxxx  
 Invoice No: xx  
 Invoice Period: \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_

**Listing of Completed Payment Activities**  
**(Part E, Section 2.2.2)**

Activity ID No.	Activity Description	Payment Activity value set forth on Schedule of Values
<b>IH 635 Section Total</b>		<b>\$x,xxx,xxx.00</b>
<b>1.1.1 EBFR Eastbound Frontage Road</b>		\$xxx,xxx.00
AEBFR1245	EBnd Frtg Rd – Sta 1237+00 to Sta 1358+00 – Earthwork	\$xxx,xxx.00
AEBFR1255	EBnd Frtg Rd – Sta 1237+00 to Sta 1358+00 – Subgrade	\$xxx,xxx.00
AEBFR1265	EBnd Frtg Rd – Sta 1237+00 to Sta 1358+00 – Form and Pour 12" CRCP	\$xxx,xxx.00
<b>1.1.4.1.7 Tunnel Systems</b>		\$xxx,xxx.00
AEBML 1245	Install Emergency Egress Tunnel Doors	\$xxx,xxx.00
AEBML 1255	Build-out Emergency Egress Stairwells	\$xxx,xxx.00
<b>IH 635 / IH 35E Interchange</b>		\$xxx,xxx.00
<b>1.2.1 Ramp Direct Connector Ramp</b>		\$xxx,xxx.00
BEBR11131	DC Ramp 1 – Earthwork	\$xxx,xxx.00
BEBR12131	DC Ramp 1 – Subgrade	\$xxx,xxx.00
BWBR20131	DC Ramp 2 – Form and Pour 12" CRCP	\$xxx,xxx.00
BWBR20131	DC Ramp 2 – Place Pavement Markings	\$xxx,xxx.00
<b>TOTAL EARNED _____, 20__ – _____, 20__</b>		<b>\$xx,xxx,xxx.xx</b>
<b>TOTAL EARNED TO DATE</b>		<b>\$xxx,xxx,xxx.00</b>

**CERTIFICATE**  
**(Part E, Section 2.2.3)**

In order to induce the Texas Department of Transportation ("TxDOT") to make payment as requested by this Payment Request, Developer hereby certifies, represents and warrants to TxDOT as follows:

1. Unless otherwise indicated, capitalized terms used herein shall have the meanings set forth in that certain Comprehensive Development Agreement between TxDOT and Developer.
2. The Work associated with each Payment Activity described in the exhibits and documents attached hereto is 100% complete and has been fully performed in a prudent manner and in compliance with the requirements of the CDA Documents; all necessary materials to perform such Work have been provided in accordance with the provisions of the CDA Documents and Design-Build Contract; and the information contained in such exhibits and documents is true, complete and correct in all material respects.
3. The amount specified in the Payment Request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous Payment Request (unless disputed or rejected for payment) and is not the subject of any pending Payment Request from Developer.
4. No Developer Default has occurred and is continuing that has not been reported to TxDOT.
5. The representations and warranties of Developer set forth in the Agreement are true and correct as of the date of this Payment Request.
6. No event of default or event under the Design-Build Contract which with the giving of notice or the lapse of time would result in an event of default under the Design-Build Contract has occurred and is continuing as of the date hereof. *[After the Collateral Agent exercises any step-in rights and assumes control of design and construction of the Project, and until transfer of the Developer's Interest from the Collateral Agent to an approved Substituted Entity, this representation from the Collateral Agent may be revised to read as follows, if necessary: No event of default or event under the Design-Build Contract which with the giving of notice or the lapse of time would result in an event of default under the Design-Build Contract has occurred and is continuing as of the date hereof, except as may be specifically disclosed in writing with this Payment Request, and for each such exception either the Design-Build Contractor is diligently and in good faith pursuing cure thereof or the undersigned is diligently pursuing its lawful remedies relating to such event, as more particularly described in writing with this Payment Request.]*
7. All Governmental Approvals necessary for the Work that are Developer's obligation to obtain pursuant to the CDA Documents and to which this Payment Request relates have been secured, except to the extent TxDOT and the issuing Governmental Entity have granted a written exception, and there exists no reason to believe that any future Governmental Approvals that are Developer's obligation to obtain pursuant to the CDA Documents for the Work cannot be secured.
8. Neither Developer nor the Design-Build Contractor is barred or suspended from providing goods or services to any local, State or federal agency. Except for any specific subcontractor or Supplier listed as barred or suspended in an attachment hereto, each subcontractor and Supplier for the Work has certified in its respective invoice to the Design-Build Contractor that it is not barred or suspended from providing goods or services to any local, state or federal

agency, and to Developer's knowledge no subcontractor or Supplier has been so barred or suspended.

9. As of the date hereof, Developer has been paid all amounts due to it under the CDA Documents and the Design-Build Contractor, each other prime Contractor for Secured Work, and all subcontractors, Suppliers, Utility Owners and other third parties engaged or retained for performance of Secured Work or supply of related services materials or equipment have been paid all amounts due under their respective contracts or purchase agreements (in each case, other than amounts to be paid pursuant to this Payment Request, and in each case other than retainage and amounts in dispute of which Developer has previously given TxDOT written notice setting forth in detail the amounts in dispute).

10. Prevailing wages have been paid to all employees of Developer, the Design-Build Contractor and all subcontractors in accordance with the rates set forth in the Agreement.

11. Also attached hereto are:

(a) A certificate and release signed by the Design-Build Contractor, each other prime Contractor for Secured Work and each subcontractor or Supplier, Utility Owner or other third party engaged or retained for performance of Secured Work or supply of related services, materials or equipment included in any preceding Payment Request for which Developer received payment, certifying that it has received payment in full for such services, materials or equipment, except only for retainage and amounts in dispute, stating any amounts in dispute and waiving and releasing any and all claims, liens or security interests, known or unknown, suspected or unsuspected, arising out of such services, materials or equipment against any person or property whatsoever, including TxDOT, the State, the Project, any Payment Bond, and any letters of credit, except potential claims against retainage, or letters of credit or certificates of deposit for retainage.

(b) A current Maximum Payment Curve inclusive of all approved adjustments.

(c) An "Affidavit of Wages Paid" submitted by the Design-Build Contractor, each other prime Contractor for Secured Work, and each subcontractor, certifying wages paid and compliance with applicable prevailing wage requirements.

(d) Other support documentation as required by the Agreement or as appropriate to support this Payment Request.

"Developer"

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT 3 TO EXHIBIT 7**

**MAXIMUM PAYMENT CURVE**

<b>NTP2 +</b>	<b>Maximum Payment from Public Funds Amount (Cumulative)</b>
3 months	\$0
6 months	\$0
9 months	\$0
12 months	\$0
15 months	\$0
18 months	\$0
21 months	\$0
24 months	\$0
27 months	\$0
30 months	\$0
33 months	\$0
36 months	\$0
39 months	\$73,769,432
42 months	\$197,929,820
45 months	\$273,556,441
48 months	\$345,595,570
51 months	\$389,215,626
54 months	\$423,790,078
57 months	\$443,173,001
60 months	\$445,000,000

**EXHIBIT 8**

**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	24
Attachment 3 – Wage Determination of the Secretary of Labor	4
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Affirmative Action	5
Attachment 6 – Debarment and Suspension Certification	1
Attachment 7 – Lobbying Certification	2
Attachment 8 – Compliance with Section 1604(b)(3) of SAFETEA-LU	2
Attachment 9 – Compliance with Buy America Requirements	2

## ATTACHMENT 1 TO EXHIBIT 8

### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

GENERAL. — The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 8. Whenever in said required contract provisions references are made to:

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

(b) "contractor", "prime contractor", "bidder" or "prospective primary participant", such references shall be construed to mean Developer or its authorized representative and/or the Design-Build Contractor or its authorized representative, as may be appropriate under the circumstances;

(c) "contract" or "prime contract", such references shall be construed to mean the Design-Build Contract;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor", such references shall be construed to mean, as appropriate, Contractors (other than NTTA) other than the Design-Build Contractor; and

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

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall cause the contractor to comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or

indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.** — Part 26, Title 49, Code of Federal Regulations applies to this Project. Pertinent sections of said Code are incorporated within other sections of the Contract and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### **CONVICT PRODUCED MATERIALS**

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

FHWA FORM 1273 SECTIONS VII.1 AND VII.2 INAPPLICABLE – Pursuant to 23 CFR 635.116(d), the requirements of Sections VII.1 and VII.2 of FHWA Form 1273 (Attachment 2 to Exhibit 8 to the Agreement) are inapplicable to the Agreement.

#### **ACCESS TO RECORDS**

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

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

**ATTACHMENT 2 TO EXHIBIT 8**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

**FHWA Form 1273**

**TABLE OF CONTENTS**

	<u>Page</u>
I GENERAL.....	3
II. NONDISCRIMINATION.....	4
1. Equal Employment Opportunity.....	4
2. EEO Officer.....	4
3. Dissemination of Policy.....	4
4. Recruitment.....	5
5. Personnel Actions.....	5
6. Training and Promotion.....	6
7. Unions.....	6
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment.....	7
9. Records and Reports.....	8
III. NONSEGREGATED FACILITIES.....	8
IV. PAYMENT OF PREDETERMINED MINIMUM WAGE.....	9
1. General.....	9
2. Classification.....	10
3. Payment of Fringe Benefits.....	11
4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers.....	11
5. Apprentices and Trainees (Programs of the U.S. DOT).....	13
6. Withholding.....	13
7. Overtime Requirements.....	14
8. Violation.....	14
9. Withholding for Unpaid Wages and Liquidated Damages.....	14

V. STATEMENTS AND PAYROLLS ..... 14

1. Compliance with Copeland Regulations (29 CFR 3)..... 15

2. Payrolls and Payroll Records ..... 15

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR ..... 16

VII. SUBLETTING OR ASSIGNING THE CONTRACT ..... 17

VIII. SAFETY: ACCIDENT PREVENTION ..... 18

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS ..... 18

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT..... 19

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.....20

1. Instructions for Certification - Primary Covered Transactions .....20

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING .....24

## I GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;

Section IV, paragraphs 1, 2, 3, 4, and 7;

Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States [Note: Not applicable to the Project - (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A)], or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

## II. NONDISCRIMINATION

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

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
  - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
  - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

**6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

- 7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

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

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
    - i. The number of minority and non-minority group members and women employed in each work classification on the project;
    - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
    - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
    - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
  - b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

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

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

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

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

#### **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

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

##### **1. General:**

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the

time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

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

**2. Classification:**

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
  - i. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - ii. the additional classification is utilized in the area by the construction industry;
  - iii. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - iv. with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour

Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

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

**3. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

a. Apprentices:

- i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the

applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

- iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

- iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- iv. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

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

## **5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

## **6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as

much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

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

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related

subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**1. Compliance with Copeland Regulations (29 CFR 3)**

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

**2. Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. [Note: Not applicable to the Project - In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1.] Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime

contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis,

highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

- a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of

these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON  
FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

- *"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*
- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

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

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

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

**1. Instructions for Certification - Primary Covered Transactions**

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

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage

sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

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

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

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

3. Instructions for Certification - Lower Tier Covered Transactions:

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

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the

meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

## **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



Concrete Rubber	\$ 10.61	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	\$ 14.12	0.00
Electrician	\$ 18.12	0.00
Flagger	\$ 8.43	0.00
Form Builder/Setter, Structures	\$ 11.63	0.00
Form Setter, Paving & Curb.	\$ 11.83	0.00
Foundation Drill Operator, Crawler Mounted	\$ 13.67	0.00
Foundation Drill Operator, Truck Mounted	\$ 16.30	0.00
Front End Loader Operator	\$ 12.62	0.00
Laborer, common	\$ 9.18	0.00
Laborer, Utility	\$ 10.65	0.00
Mechanic	\$ 16.97	0.00
Milling Machine Operator, Fine Grade	\$ 11.83	0.00
Mixer operator	\$ 11.58	0.00
Motor Grader Operator, Fine Grade	\$ 15.20	0.00
Motor Grader Operator, Rough	\$ 14.50	0.00
Oiler	\$ 14.98	0.00
Painter, Structures	\$ 13.17	0.00
Pavement Marking Machine Operator	\$ 10.04	0.00
Pipelayer	\$ 11.04	0.00
Reinforcing Steel Setter, Paving	\$ 14.86	0.00
Reinforcing Steel Setter, Structure	\$ 16.29	0.00
Roller Operator, Pneumatic, Self-Propelled	\$ 11.07	0.00
Roller Operator, Steel Wheel, Flat Wheel/Tamping	\$ 10.92	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement	\$ 11.28	0.00
Scraper Operator	\$ 11.42	0.00
Servicer	\$ 12.32	0.00
Slip Form Machine Operator	\$ 12.33	0.00
Spreader Box operator	\$ 10.92	0.00
Tractor operator, Crawler Type	\$ 12.60	0.00
Tractor operator, Pneumatic	\$ 12.91	0.00
Traveling Mixer Operator	\$ 12.03	0.00
Truck driver, lowboy-Float\$	\$ 14.93	0.00
Truck driver, Single Axle, Heavy	\$ 11.47	0.00
Truck driver, Single Axle, Light	\$ 10.91	0.00
Truck Driver, Tandem Axle, Semi-Trailer	\$ 11.75	0.00

Truck Driver, Transit-Mix	\$ 12.08	0.00
Wagon Drill, Boring Machine, Post Hole Driller Operator	\$ 14.00	0.00
Welder	\$ 13.57	0.00
Work Zone Barricade Servicer	\$ 10.09	0.00

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**ATTACHMENT 4 TO EXHIBIT 8**

**EQUAL EMPLOYMENT OPPORTUNITY**

**SPECIAL PROVISION**

**000---001**

**Standard Federal Equal Employment Opportunity  
Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to

demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

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

- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to

minority and female community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the contractor's EEO policy and the contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both

minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

**ATTACHMENT 5 TO EXHIBIT 8**

**AFFIRMATIVE ACTION**

**SPECIAL PROVISION**

**000--1981**

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

**1. General.**

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the contractor's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

**2. Goals.**

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

**Goals for minority  
participation in  
each trade  
(per- cent)**

**Goals for female  
participation in  
each trade  
(per-cent)**

See Table 1

6.9

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

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this plan.

**3. Subcontracting.**

The contractor shall provide written notification to TxDOT within ten Business Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of TxDOT in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

**4. Covered area.**

As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

**5. Reports.**

The contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5

Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5

Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kennedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2

Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

**ATTACHMENT 6 TO EXHIBIT 8**

**DEBARMENT AND SUSPENSION CERTIFICATION**

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

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

## ATTACHMENT 7 TO EXHIBIT 8

### CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective Developer/Contract certifies, to the best of its knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of **ANY** Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed CDA or Contract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. Developer/Contractor shall require that the language of this certification be included in all lower tier Contracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

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

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

## ATTACHMENT 8 TO EXHIBIT 8

### **COMPLIANCE WITH SECTION 1604(b)(3) OF THE SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS (SAFETEA-LU) AND WITH THE AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE FEDERAL HIGHWAY ADMINISTRATION (THE "TOLL AGREEMENT")**

#### **1. Monitoring and Reporting**

- a. The Toll Agreement requires TxDOT to annually monitor and report to FHWA the Project's performance with respect to the achievement of established performance goals.
- b. To enable TxDOT to perform such monitoring and submit such reports, Developer shall perform such monitoring, coordinate with Governmental Entities as necessary to collect applicable information and provide to TxDOT not later than February 1 after the end of each calendar year, starting with the calendar year in which the first Service Commencement Date occurs, a draft monitoring report containing all of the data required in Attachment 2 of the Toll Agreement, in form reasonably acceptable to TxDOT. Developer shall verify the contents of the monitoring report and submit a final monitoring report, in form reasonably acceptable to TxDOT, not later than March 15 of each such calendar year. Developer shall cooperate with TxDOT in finalizing the monitoring report. If FHWA prescribes a form of monitoring report from TxDOT, including any certifications regarding the performance of the Project, then Developer shall deliver to TxDOT a monitoring report and any required certifications in the same form.

#### **2. Annual Audit of Records**

- a. The Toll Agreement requires TxDOT to annually audit the records of the Project for compliance with the provisions of the Toll Agreement, and to report the audit results to FHWA. The Toll Agreement provides that in lieu of TxDOT performing the audit, TxDOT may deliver to FHWA a report of an independent auditor furnished by Developer.
- b. To enable TxDOT to comply with such annual audit requirement as it relates to compliance with the obligation in the Toll Agreement to adequately maintain the Project, Developer shall prepare and deliver to TxDOT a written report of the results of each quarterly Audit Inspection and Asset Condition Score by Developer. TxDOT shall have the right to deliver to FHWA copies of such reports, as well as copies of reports from the Independent Engineer of its Audit Inspections and its assessments of the accuracy of Developer's O&M Records. In addition, Developer shall permit FHWA to audit Developer's O&M Records upon request.
- c. If FHWA requires an annual audit to verify compliance with the Toll Agreement's provisions regarding use of Toll Revenues, then to enable TxDOT to comply with such annual audit requirement, Developer shall deliver to TxDOT, not later than

90 Days after the end of each Fiscal Year of Developer during the Term, an audited financial statement. The audited financial statement shall include statements of revenues and expenses, assets and liabilities, and net profits from operations. The audited statements shall be prepared by a reputable, independent certified public accountant according to U.S. GAAP, consistently applied. TxDOT shall have the right to deliver copies of such audited statements to FHWA.

## **ATTACHMENT 9 TO EXHIBIT 8**

### **COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

Developer shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the Design-Build Contract.

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

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

At Developer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Change Request under Section 14.2 of the Agreement.

**BUY AMERICA CERTIFICATE**

**Certificate of Compliance**

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Developer's Name: \_\_\_\_\_

Title: \_\_\_\_\_

Or

**Certificate for Noncompliance**

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Developer's Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 9**

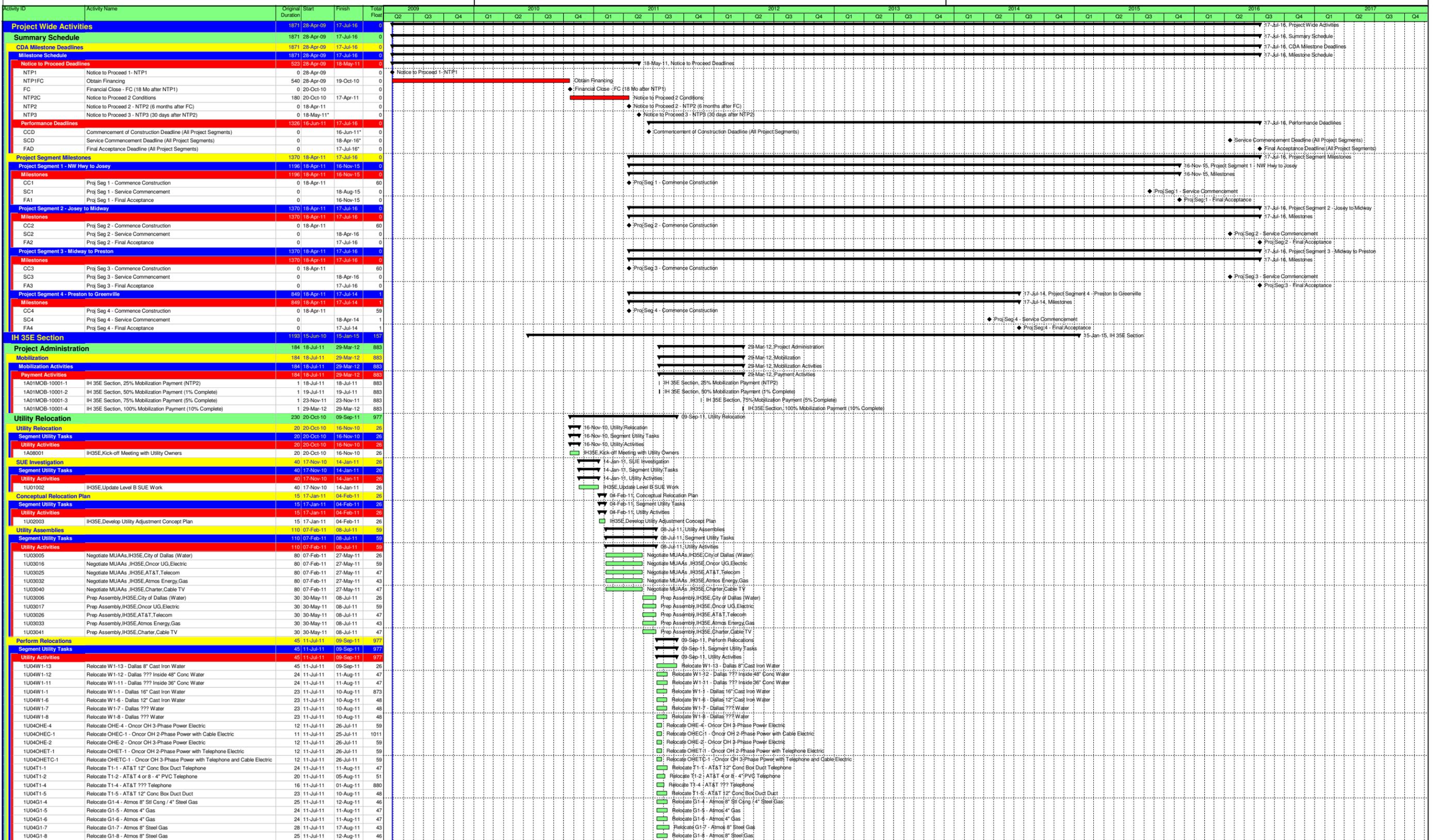
**MILESTONE SCHEDULE**

<b>Milestone</b>	<b>Deadline</b>
NTP2 Conditions Deadline	The later of (a) 180 days after the date TxDOT issues NTP1 or (b) 180 days after the date Financial Close occurs
NTP3 Conditions Deadline	180 days after the date TxDOT issues a written notice of intent to issue NTP3 under <u>Section 7.7.2.3</u> of the Agreement
Commencement of Construction Work of the IH 635 Section and the IH 635/IH 35E Interchange	180 days after the date TxDOT issues NTP2
Commencement of Construction Work of the IH 35E Section	180 days after the date TxDOT issues NTP2
Commencement of Construction Work of the IH 635/US 75 Interchange	180 days after the date TxDOT issues NTP2
Service Commencement Deadline	5 years after the date TxDOT issues NTP2
Long Stop Date	18 months after the Service Commencement Deadline
Final Acceptance Deadline for each Project Segment	90 days after the Service Commencement Date for the applicable Project Segment

**EXHIBIT 10**

**PRELIMINARY PROJECT BASELINE SCHEDULE**

The Preliminary Project Baseline Schedule is attached hereto as Attachment 1 to this Exhibit 10. The Preliminary Project Baseline Schedule shall be the foundation to prepare the Project Baseline Schedule submitted for Approval as a condition of NTP2.



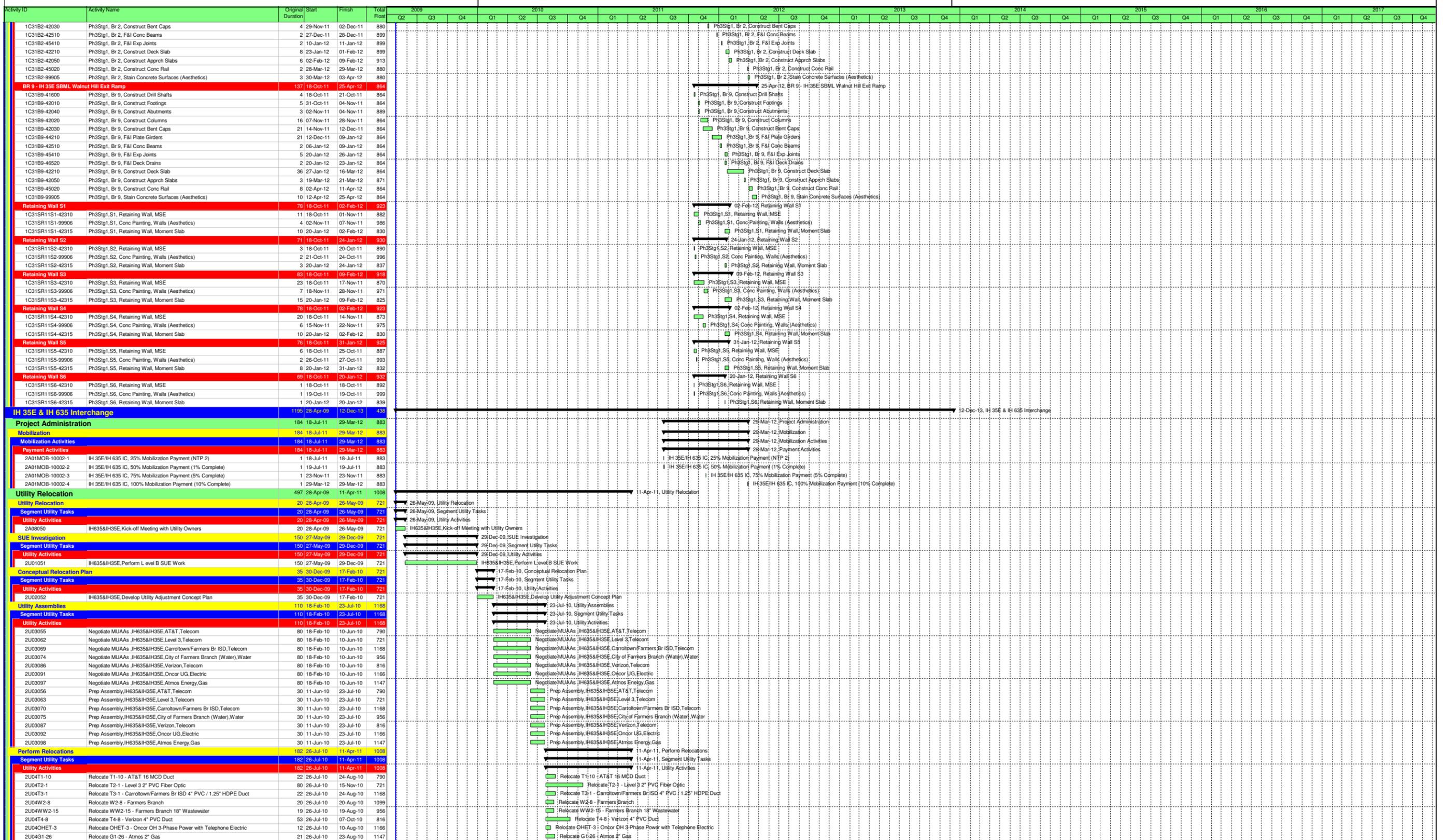
█ Remaining Level of Effort   
 █ Actual Work   
 █ Critical Remaining Work   
 ◆ Milestone   
 ◆ Summary













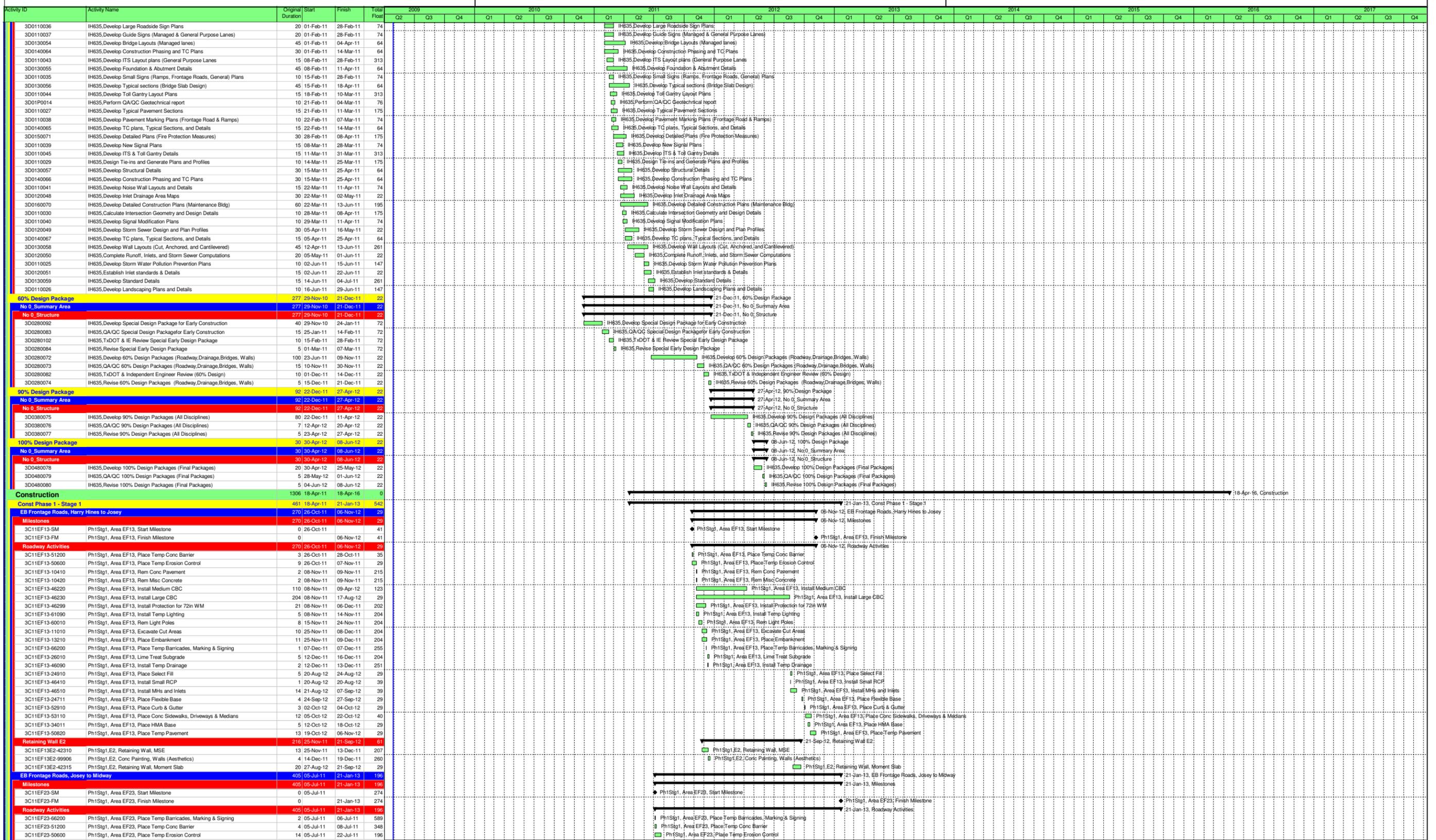






















































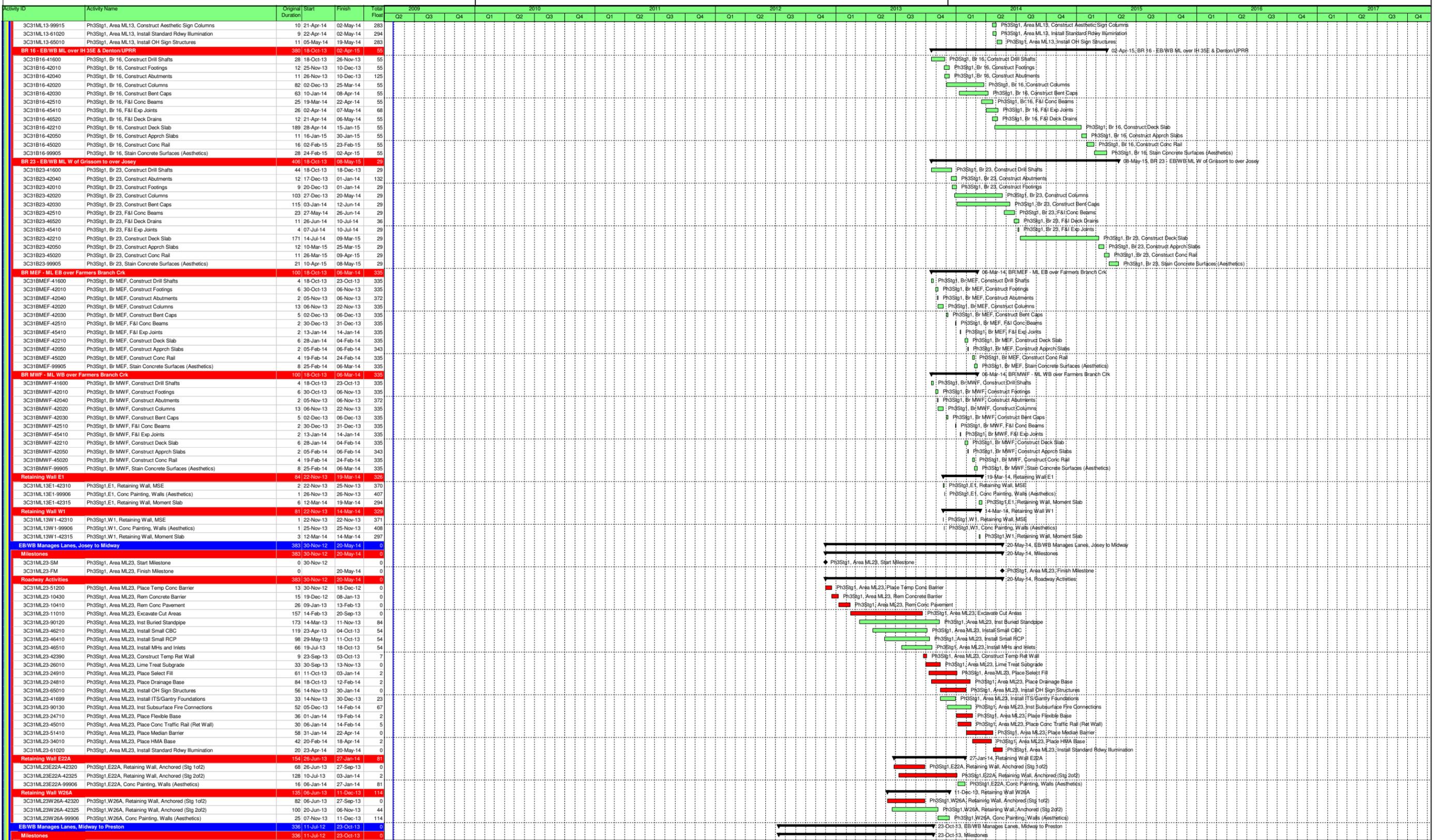












■ Remaining Level of Effort   
 ■ Actual Work   
 ■ Critical Remaining Work   
 ◆ Milestone   
 ◆ Summary





















Activity ID	Activity Name	Original Duration	Start	Finish	Total Float	2009				2010				2011				2012				2013				2014				2015				2016				2017			
						Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4					
<b>Roadway Activities</b>						<ul style="list-style-type: none"> <li>16-Jul-14, Roadway Activities</li> <li>Ph3Stg2, Area XR08, Rem Conc Pavement</li> <li>Ph3Stg2, Area XR08, Rem Misc Concrete</li> <li>Ph3Stg2, Area XR08, Lime Treat Subgrade</li> <li>Ph3Stg2, Area XR08, Place Select Fill</li> <li>Ph3Stg2, Area XR08, Install ITS/Toll Duct Bank</li> <li>Ph3Stg2, Area XR08, Place Flexible Base</li> <li>Ph3Stg2, Area XR08, Place Curb &amp; Gutter</li> <li>Ph3Stg2, Area XR08, Place Conc Sidewalks, Driveways &amp; Medians</li> <li>Ph3Stg2, Area XR08, Place HMA Base</li> <li>Ph3Stg2, Area XR08, Install Hardscaping</li> <li>Ph3Stg2, Area XR08, Install Standard Rdwy Illumination</li> <li>Ph3Stg2, Area XR08, Install U/P Illumination</li> <li>Ph3Stg2, Area XR08, Install Perm Traffic Signals</li> <li>Ph3Stg2, Area XR08, Install Small Signs</li> <li>Ph3Stg2, Area XR08, Install Ornamental Fencing</li> </ul>																																			
<b>BR 38 - Midway Rd over EB/WB ML</b>						<ul style="list-style-type: none"> <li>21-Jul-14, BR 38 - Midway Rd over EB/WB ML</li> <li>Ph3Stg2, Br 38, Construct Drill Shafts</li> <li>Ph3Stg2, Br 38, Construct Abutments</li> <li>Ph3Stg2, Br 38, Construct Footings</li> <li>Ph3Stg2, Br 38, Construct Columns</li> <li>Ph3Stg2, Br 38, F&amp;I Conc Beams</li> <li>Ph3Stg2, Br 38, Construct Aesthetic Spires</li> <li>Ph3Stg2, Br 38, F&amp;I Exp Joints</li> <li>Ph3Stg2, Br 38, F&amp;I Deck Drains</li> <li>Ph3Stg2, Br 38, Construct Deck Slab</li> <li>Ph3Stg2, Br 38, Construct Appro Slabs</li> <li>Ph3Stg2, Br 38, Construct Conc Rail</li> <li>Ph3Stg2, Br 38, Construct Sidewalk &amp; Median</li> <li>Ph3Stg2, Br 38, Stain Concrete Surfaces (Aesthetics)</li> </ul>																																			
<b>XR Underpass - Hill Crest</b>						<ul style="list-style-type: none"> <li>11-Mar-13, XR Underpass - Hill Crest</li> <li>11-Mar-13, Milestones</li> <li>Ph3Stg2, Area XR13, Start Milestone</li> <li>Ph3Stg2, Area XR13, Finish Milestone</li> <li>11-Mar-13, Roadway Activities</li> <li>Ph3Stg2, Area XR13, Rem Conc Pavement</li> <li>Ph3Stg2, Area XR13, Rem Misc Concrete</li> <li>Ph3Stg2, Area XR13, Lime Treat Subgrade</li> <li>Ph3Stg2, Area XR13, Install ITS/Toll Duct Bank</li> <li>Ph3Stg2, Area XR13, Place Select Fill</li> <li>Ph3Stg2, Area XR13, Place Flexible Base</li> <li>Ph3Stg2, Area XR13, Place Curb &amp; Gutter</li> <li>Ph3Stg2, Area XR13, Place Conc Sidewalks, Driveways &amp; Medians</li> <li>Ph3Stg2, Area XR13, Place HMA Base</li> <li>Ph3Stg2, Area XR13, Install Hardscaping</li> <li>Ph3Stg2, Area XR13, Install Standard Rdwy Illumination</li> <li>Ph3Stg2, Area XR13, Install Perm Traffic Signals</li> <li>Ph3Stg2, Area XR13, Install Small Signs</li> </ul>																																			
<b>XR Underpass - Park Central</b>						<ul style="list-style-type: none"> <li>17-Jan-13, XR Underpass - Park Central</li> <li>17-Jan-13, Milestones</li> <li>Ph3Stg2, Area XR14, Start Milestone</li> <li>Ph3Stg2, Area XR14, Finish Milestone</li> <li>17-Jan-13, Roadway Activities</li> <li>Ph3Stg2, Area XR14, Rem Conc Pavement</li> <li>Ph3Stg2, Area XR14, Rem Misc Concrete</li> <li>Ph3Stg2, Area XR14, Lime Treat Subgrade</li> <li>Ph3Stg2, Area XR14, Install ITS/Toll Duct Bank</li> <li>Ph3Stg2, Area XR14, Place Select Fill</li> <li>Ph3Stg2, Area XR14, Place Flexible Base</li> <li>Ph3Stg2, Area XR14, Place Curb &amp; Gutter</li> <li>Ph3Stg2, Area XR14, Place Conc Sidewalks, Driveways &amp; Medians</li> <li>Ph3Stg2, Area XR14, Place HMA Base</li> <li>Ph3Stg2, Area XR14, Install Hardscaping</li> <li>Ph3Stg2, Area XR14, Install Standard Rdwy Illumination</li> <li>Ph3Stg2, Area XR14, Install Perm Traffic Signals</li> <li>Ph3Stg2, Area XR14, Install Small Signs</li> </ul>																																			
<b>Const Phase 4 - Stage 1</b>						<ul style="list-style-type: none"> <li>06-Mar-13, EB Frontage Roads, Harry Hines to Josey</li> <li>06-Mar-13, Milestones</li> <li>Ph4Stg1, Area EF13, Start Milestone</li> <li>Ph4Stg1, Area EF13, Finish Milestone</li> <li>06-Mar-13, Roadway Activities</li> <li>Ph4Stg1, Area EF13, Install Comm Equip &amp; Fiber</li> </ul>																																			
<b>EB Frontage Roads, Harry Hines to Josey</b>						<ul style="list-style-type: none"> <li>13-May-15, EB Frontage Roads, Josey to Midway</li> <li>13-May-15, Milestones</li> <li>Ph4Stg1, Area EF23, Start Milestone</li> <li>Ph4Stg1, Area EF23, Finish Milestone</li> <li>13-May-15, Roadway Activities</li> <li>Ph4Stg1, Area EF23, Place Temp Barricades, Marking &amp; Signing</li> <li>Ph4Stg1, Area EF23, Place Temp Conc Barrier</li> <li>Ph4Stg1, Area EF23, Place Temp Erosion Control</li> <li>Ph4Stg1, Area EF23, Rem Conc Pavement</li> <li>Ph4Stg1, Area EF23, Rem Misc Concrete</li> <li>Ph4Stg1, Area EF23, Excavate Cut Areas</li> <li>Ph4Stg1, Area EF23, Place Embankment</li> <li>Ph4Stg1, Area EF23, Lime Treat Subgrade</li> <li>Ph4Stg1, Area EF23, Install ITS/Toll Duct Bank</li> <li>Ph4Stg1, Area EF23, Install Small RCP</li> <li>Ph4Stg1, Area EF23, Inst Buried Standpipe</li> <li>Ph4Stg1, Area EF23, Install MHs and Inlets</li> <li>Ph4Stg1, Area EF23, Inst Surface Fire Dept Connections</li> <li>Ph4Stg1, Area EF23, Place Select Fill</li> <li>Ph4Stg1, Area EF23, Place Flexible Base</li> <li>Ph4Stg1, Area EF23, Place Curb &amp; Gutter</li> <li>Ph4Stg1, Area EF23, Place Conc Sidewalks, Driveways &amp; Medians</li> <li>Ph4Stg1, Area EF23, Install ITS/Gantry Foundations</li> </ul>																																			

█ Remaining Level of Effort   
 █ Remaining Work   
 ◆ Milestone   
 ◆ Summary  
█ Actual Work   
 █ Critical Remaining Work











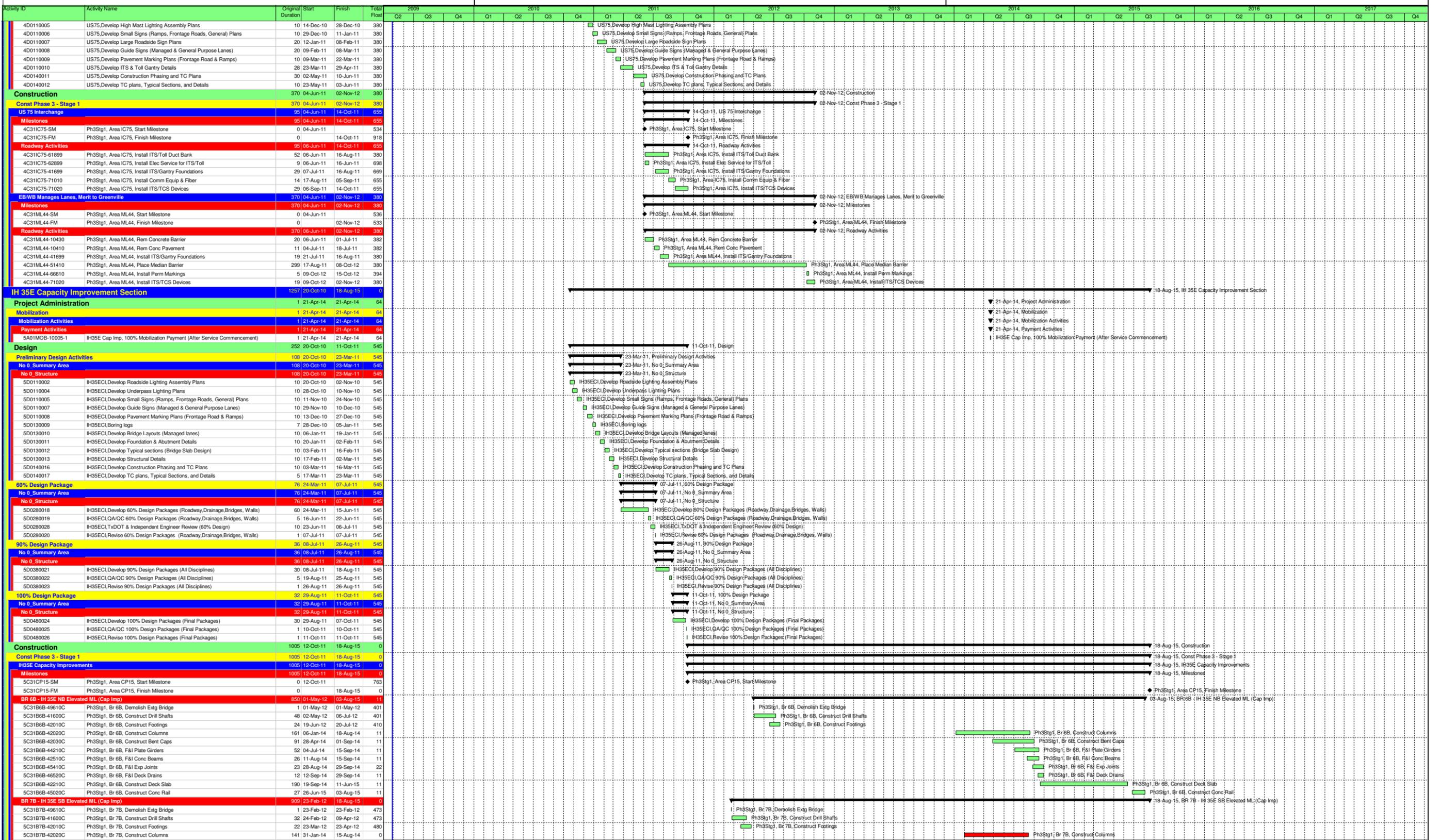














**EXHIBIT 12**

**FORM OF LENDER'S DIRECT AGREEMENT**

**THIS AGREEMENT** ("Agreement") is made by and between the State of Texas acting by and through the Texas Department of Transportation, ("TxDOT") and \_\_\_\_\_, ("Lender") for the purpose of facilitating the Lender's financing or Refinancing of the IH 635 Managed Lanes Project.

**RECITALS**

**WHEREAS**, TxDOT and LBJ Infrastructure Group LLC, a limited liability company ("Developer") have entered into a Comprehensive Development Agreement ("CDA") for the IH 635 Managed Lanes Project (the "Project"), which CDA contemplates Developer obtaining financing or Refinancing from third parties; and

**WHEREAS**, TxDOT desires to facilitate the Lender's provision of financing or Refinancing to Developer; and

**WHEREAS**, in order to induce the Lender to provide the financing or Refinancing necessary for the Project, the Lender requires certain assurances from TxDOT regarding the Lender's rights in the event of a default by Developer; and

**WHEREAS**, TxDOT and Developer have previously set forth such assurances in the CDA for the benefit of the Lender as an express third party beneficiary; and

**WHEREAS**, TxDOT and the Lender have agreed to separately contract for such assurances, provided that such contract shall be consistent in all respects with, and not provide the Lender with any rights beyond those set forth in, Article 20 of the CDA; and

**WHEREAS**, the Lender acknowledges that any rights under this Agreement and the CDA are solely derivative of the rights of Developer; and

**WHEREAS**, the Lender is ***[use applicable language]*** [making a direct, secured loan to Developer to finance or refinance the Project without participating lenders] [acting as the Collateral Agent for and on behalf of participating lenders providing a secured loan to Developer to finance or refinance the Project (in which case "Collateral Agent" as used in this Agreement refers to the Lender)]; and

**NOW, THEREFORE**, TxDOT and the Lender, in consideration of the mutual covenants and agreements herein contained, including within these recitals, do hereby mutually agree as follows.

## AGREEMENT

### I. ARTICLE 1. DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

#### 1.1 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit 1 to the CDA.

#### 1.2 Recitals Incorporated

The Recitals in this Agreement are part of the terms of this Agreement.

#### 1.3 Contract Documents and Order of Precedence

The following documents comprise the contract documents for this Agreement. In the event of any conflict, ambiguity or inconsistency among the contract documents, the order of precedence shall be as follows:

1.3.1 Supplemental agreements, change orders, and addenda to this Agreement;

1.3.2 This Agreement, including Recitals; and

1.3.3 Those provisions of the CDA that are explicitly referenced in this Agreement.

#### 1.4 No Duplication; No Effect on CDA

1.4.1 The sole purpose of this Agreement is to provide the Lender privity of contract with TxDOT regarding the matters set forth in Article 20 of the CDA. The rights of Lender under Article 2 of this Agreement and Article 20 of the CDA are one and the same. Nothing in Article 2 of this Agreement confers on the Lender any rights beyond or in duplication of the rights the Lender has under Article 20 of the CDA.

1.4.2 Nothing in this Agreement amends or modifies any of Developer's obligations to TxDOT under the CDA.

## ARTICLE 2. TERMS

### 2.1 Conditions and Limitations Respecting Lenders' Rights

2.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement and Article 20 of the CDA, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 4.3 of the CDA.

2.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings under clause (b), (c) or (d) of the definition of Exempt Refinancing) shall be valid or effective, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement and Article 20 of the CDA, unless the Refinancing is in compliance with Section 4.4 of the CDA.

**2.1.3** No Funding Agreement or Security Document shall be binding upon TxDOT in the enforcement of its rights and remedies as provided herein and by Law, and the Lender shall not be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until (a) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been deposited into an Intellectual Property Escrow and (b) TxDOT has received written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, TxDOT shall not be charged with notice of such assignment, and no assignee shall be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until TxDOT has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, has been deposited into an Intellectual Property Escrow and TxDOT has received written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, TxDOT shall not be charged with notice of such change, and no substitute Collateral Agent shall be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA, unless and until TxDOT has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

**2.1.4** The Lender shall not be entitled to the rights, benefits and protections of this Agreement or Article 20 of the CDA unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents. For avoidance of doubt, if the Lender holds Project Debt secured by a Subordinated Security Document it shall not have any rights, benefits or protections under this Agreement or Article 20 of the CDA.

**2.1.5** The Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Project, the Lease or Toll Revenues than Developer has at any applicable time under the CDA, other than the provisions in this Agreement and in Article 20 of the CDA for the specific protection of the Lender.

**2.1.6** All rights acquired by the Lender under any Funding Agreement or Security Document shall be subject to the provisions of the CDA and the Lease and to the rights of TxDOT hereunder and thereunder.

**2.1.7** The following provisions of this Agreement shall apply only to Security Documents, and the Lenders thereunder, that comply with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement and Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA. None of the following provisions of this Agreement shall be construed inconsistently with the provisions of this Section 2.1 or Section 20.1 of the CDA. The provisions of this Agreement that are binding on TxDOT shall inure only to the benefit of the Lender, and create no rights in favor of Developer.

## **2.2 Effect of Amendments**

While any Security Document is in effect, no agreement between TxDOT and Developer for the modification or amendment of the CDA or the Lease shall be binding without the Collateral Agent's consent, except to the extent expressly provided otherwise in this Agreement.

## 2.3 Notices to Collateral Agent

As long as any Security Document shall remain unsatisfied of record, TxDOT shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential breach of the CDA or the Lease or an actual or potential Developer Default, including any Warning Notice, and any notice it sends to Developer, the Design-Build Contractor or any O&M Contractor of default by the Design-Build Contractor or any O&M Contractor under the Design-Build Contract or O&M Contract.

## 2.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender and Funding Agreements.

**2.4.1** Should any Developer Default occur which would either immediately or, following the applicable grace period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate or suspend its obligations under this Agreement, TxDOT shall not terminate the CDA or the Lease until it first delivers to the Collateral Agent a copy of the Warning Notice given to Developer and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided below, provided that no opportunity to cure beyond that afforded Developer shall be required for failure of Developer to timely deliver or perform any remedial plan required under Section 17.3.6 of the CDA, and neither a Warning Notice nor opportunity to cure shall be required for a Developer Default under Section 17.1.1.14 or 17.1.1.15 of the CDA. Commencing on the date the applicable cure period available to Developer expires, the Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity; and from and after such date TxDOT shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same. TxDOT shall have no obligation to accept any Lender's tender of a cure prior to such date.

**2.4.2** If such Developer Default consists of Developer's failure to pay a monetary obligation, the Collateral Agent may cure such Developer Default by paying all amounts due within 60 days after TxDOT delivers a copy of the Warning Notice to the Collateral Agent. If cure is not effected within such 60-day period, TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

**2.4.3** If the Developer Default consists of Developer's failure to achieve Service Commencement of all Project Segments by the Service Commencement Deadline, as the same may be extended pursuant to the CDA, then the Collateral Agent shall have until the latter of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 of the CDA and (b) the Long Stop Date, as the same may be extended pursuant to the CDA (including extension pursuant to Section 20.4.9 of the CDA), to achieve or cause Developer to achieve Service Commencement of all Project Segments. If Service Commencement of all Project Segments is not achieved by such date, then it shall constitute a material Developer Default and TxDOT may proceed to terminate the CDA and the Lease without further notice to, or opportunity to cure by, the Lender.

**2.4.4** As to each such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement of all Project Segments by the deadline set forth in Section 20.4.3 to the CDA and (c) Developer Defaults governed by Section

2.4.7 of this Agreement and Section 20.4.7 of the CDA, the Collateral Agent shall have a cure period ending 30 days after the later of (a) the date Developer's cure period expires and (b) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Project (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16 of the CDA) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within 60 days after TxDOT delivers a copy of the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending 180 days after the date Developer's cure period expires, unless extended pursuant to Section 2.4.10 of this Agreement or Section 20.4.10 of the CDA.

**2.4.5** The Collateral Agent shall have the right to postpone and extend the time to cure any Developer Default governed by Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA capable of being cured only through possession of the Project if the Collateral Agent shall:

**2.4.5.1** Within the cure period available therefor under Section 2.4.2 of this Agreement and Section 20.4.2 of the CDA, cure all Developer Defaults which may be cured by the payment of a sum of money, and within the cure period available therefor under Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA, undertake to cure any other Developer Default governed by Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA then existing or thereafter occurring and capable of being cured without possession;

**2.4.5.2** Continue to pay or cause to be paid when due all fees, rent and other amounts due from Developer under the CDA or the Lease;

**2.4.5.3** Within the later of (a) five days after expiration of Developer's cure period, if any, and (b) 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project; and

**2.4.5.4** Promptly execute all documents reasonably requested by TxDOT affecting the transactions contemplated by this Agreement and the CDA.

**2.4.6** The Collateral Agent shall exercise the right provided in Section 2.4.5 of this Agreement and Section 20.4.5 of the CDA by giving TxDOT written notice of the exercise of the same within the later of (a) five days after expiration of Developer's cure period, if any, and (b) 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession and ownership an assumption in writing of all duties, obligations and liabilities of Developer under the CDA and the Lease, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Developer Default shall be removed, and the CDA and the Lease shall not be terminated, and the Lender or the Substituted Entity shall succeed to the Developer's Interest. In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in the CDA which cannot be cured or performed until the Collateral Agent or its Substituted Entity obtains possession, the Collateral Agent or its

Substituted Entity shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement and Section 20.4.10 of the CDA.

**2.4.7** If the Developer Default is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Project, such as a Developer Default under Section 17.1.1.14 or 17.1.1.15 of the CDA, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under Section 17.3.6 of the CDA, then TxDOT may terminate the CDA and the Lease without providing a cure period to any Lender.

**2.4.8** If TxDOT terminates the CDA and the Lease under Section 20.4.6 of the CDA for inability of the Collateral Agent, despite diligent, continuous efforts, to obtain possession within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, or under Section 20.4.7 of the CDA, then TxDOT shall promptly deliver to the Collateral Agent pursuant to the notice provisions of the CDA written notice of the termination and a statement of any and all sums which would at that time be due under the CDA and the Lease then known to TxDOT. Thereafter the Collateral Agent or its Substituted Entity, to the extent then permitted by Law, shall have the option to obtain a new comprehensive development agreement, new Project lease, other new CDA Documents, new Project trust agreement and, to the extent necessary new ancillary agreements (e.g. lease escrow agreement, Intellectual Property escrow agreements) (together the "New Agreements") in accordance with and upon the following terms and conditions:

**2.4.8.1** In order to exercise such option, the Collateral Agent must deliver to TxDOT, within 360 days after TxDOT delivers its written notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent (or its Substituted Entity) will enter into the New Agreements and pay all the amounts described in Section 2.4.8.3 of this Agreement and Section 20.4.8.3 of the CDA, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent (or its Substituted Entity). If any of the foregoing is not delivered within such 360-day period, the option in favor of the Collateral Agent (and all related Lenders) shall automatically expire;

**2.4.8.2** Within 30 days after timely receipt of the written notice, written commitment and New Agreements duly executed, TxDOT shall enter into the New Agreements to which TxDOT is a party with the Collateral Agent or its Substituted Entity, subject to any extension of such 30-day period as TxDOT deems necessary to clear any claims of Developer to continued rights and possession;

**2.4.8.3** Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or its Substituted Entity shall perform all of the following:

(a) Pay to TxDOT any and all sums which would, at the time of the execution of the New Agreements, be due under the CDA or the Lease but for such termination;

(b) Otherwise fully remedy any existing Developer Defaults under the CDA or the Lease, except any uncured material Developer Default that was known to TxDOT at the time it delivers any estoppel certificate to the Lender but fails to disclose in such estoppel certificate (provided, however, that with respect to any Developer Default which cannot be cured

until the Collateral Agent or its Substituted Entity obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 2.4.10 of this Agreement and Section 20.4.10 of the CDA); and

(c) Without duplication of amounts previously paid by Developer, pay to TxDOT all reasonable costs and expenses, including TxDOT's Recoverable Costs, incurred by TxDOT in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy proceeding, (iii) the recovery of possession of the Project, (iv) all TxDOT activities during its period of possession of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or Substituted Entity, TxDOT will provide a written, documented statement of such costs and expenses.

**2.4.8.4** Upon execution of the New Agreements and payment of all sums due TxDOT, TxDOT shall (a) assign and deliver to the Collateral Agent or its Substituted Entity, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to TxDOT upon termination of the CDA pursuant to Section 19.5 of the CDA, and (b) if applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or Substituted Entity in accordance with the CDA, all funds TxDOT received from the Handback Requirements Reserve pursuant to Section 8.11.4.1 of the CDA (or from draw on a Handback Requirements Letter of Credit) less so much thereof that TxDOT spent or is entitled to as reimbursement for costs of Renewal Work TxDOT performed prior to the effectiveness of the New Agreements.

**2.4.8.5** The New Agreements shall be effective as of the date of termination of the CDA and the Lease and shall run for the remainder of the term of the CDA and the Lease. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the CDA, the Lease and other corresponding CDA Documents and ancillary agreements and documents that were binding on TxDOT and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 15.1 of the CDA (and any equivalent provisions of the Lease) shall be revised to be particular to the Collateral Agent or its Substituted Entity).

**2.4.8.6** If the holders of more than one Security Document make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8 or Section 20.4.8 of the CDA, TxDOT shall grant the New Agreements to, as applicable, the holder whose leasehold mortgage has the most senior priority of record. Priority shall be established as follows.

(a) TxDOT shall submit a written request to the Collateral Agent to designate the leasehold mortgage having the most senior priority of record. TxDOT shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by TxDOT and without liability to Lender; and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(b) If TxDOT does not receive the Collateral Agent's written designation within ten days after delivering written request, then TxDOT may conclusively rely, without further inquiry and without liability to Lender, on the seniority indicated by a then-current

title report that TxDOT obtains from one of the four largest title insurance companies doing business in Texas (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

(c) In the event the holders of more than one leasehold mortgage share *pari passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon TxDOT for New Agreements in accordance with this Section 2.4.8 and Section 20.4.8 of the CDA, TxDOT shall grant the New Agreements to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

**2.4.8.7** The provisions of this Section 2.4.8 and Section 20.4.8 of the CDA shall survive the termination of the CDA and shall continue in full force and effect thereafter.

**2.4.9** The Collateral Agent shall have the option to extend the Long Stop Date by two additional 90-day periods, provided all the following terms and conditions have been satisfied by not later than 15 days before the Long Stop Date to be extended:

**2.4.9.1** The Collateral Agent has delivered to TxDOT (a) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (b) concurrently with such written notice a payment in good funds in the applicable amount set forth in Exhibit A to this Agreement and Exhibit 24 to the CDA. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend;

**2.4.9.2** The Collateral Agent or its Substituted Entity has obtained ownership of the Developer's Interest and full possession and control of the Project to the exclusion of Developer; and

**2.4.9.3** If any other Warning Notices are then outstanding, the Collateral Agent has demonstrated to TxDOT that it or its Substituted Entity has undertaken and continues and will continue to undertake meaningful steps to prosecute cure to completion with good faith, diligence and continuity.

**2.4.10** The Collateral Agent shall have the option to extend the 180-day deadline set forth in Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA or, if applicable, the 180-day deadline after obtaining possession set forth in Section 2.4.6 of this Agreement or Section 20.4.6 of the CDA or the 180-day deadline set forth in Section 2.4.8.3(b) of this Agreement and Section 20.4.8.3(b) of the CDA, by up to but not exceeding an additional 180 days, provided that all the following conditions precedent have been satisfied by not later than 15 days before the deadline to be extended:

**2.4.10.1** The Collateral Agent has delivered to TxDOT written notice requesting extension and setting forth a reasonable time period needed to effect cure, in any event not exceeding such 180 days;

**2.4.10.2** The Collateral Agent has met all the requirements set forth in (a) Section 2.4.4 of this Agreement and Section 20.4.4 of the CDA, (b) Sections 2.4.5 and 2.4.6 of this Agreement and Sections 20.4.5 and 20.4.6 of the CDA or (c) Section 2.4.8.3 of this Agreement and Section 20.4.8.3 of the CDA, as applicable;

**2.4.10.3** The Collateral Agent has delivered evidence to TxDOT demonstrating, and TxDOT is reasonably satisfied, that full and complete cure by the Collateral Agent is highly likely within the period of extension; and

**2.4.10.4** The Collateral Agent has prepared and submitted to TxDOT, and TxDOT has approved, a remedial plan for effecting full and complete cure. The remedial plan shall set forth a schedule and specific actions to be taken by the Collateral Agent to fully and completely cure, with the schedule to be consistent with the period of extension. TxDOT may require that such actions include new and improved quality management practices, plans and procedures, revised and restated Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

Time is of the essence in the exercise of such option. If for any reason any of the foregoing conditions is not satisfied by 15 days before the deadline that is eligible to be extended, the option shall automatically expire and cease to have effect with respect to such deadline.

**2.4.11** Notwithstanding any contrary provisions of the CDA Documents, in the event the Lender or its Substituted Entity obtains ownership of the Developer's Interest and full possession and control of the Project to the exclusion of Developer, all Noncompliance Points accumulated prior to the date the Lender or Substituted Entity obtains ownership and possession shall be reduced to zero. The foregoing shall not, however, excuse the Lender or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the CDA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to TxDOT respecting uncured breaches or failures to perform.

**2.4.12** Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Developer under the CDA Documents or any Principal Project Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

**2.4.13** Nothing in this Section 2.4 or Section 20.4 of the CDA shall preclude or delay TxDOT from exercising any remedies other than termination of the CDA and the Lease due to Developer Default, including, subject to TxDOT's express covenants to forebear, TxDOT's rights to cure the Developer Default at Developer's expense and to remove and replace Developer.

## **2.5 Forbearance**

To the extent TxDOT has rights to enforce the Design-Build Contract or any O&M Contract, whether as assignee of Developer's rights or otherwise, so long as the CDA remains in effect TxDOT shall forbear from exercising remedies against the Design-Build Contractor or any O&M Contractor if (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies available to Developer under the Design-Build Contract or O&M Contract within 15 days after TxDOT delivers written notice to Developer and the Collateral Agent of default by the Design-Build Contractor or any O&M Contractor, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured.

## **2.6 Substituted Entities**

**2.6.1** Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the CDA in effect shall be deemed properly to have been made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by TxDOT makes such payment or takes such action. TxDOT shall have no obligation to recognize any claim to the Developer's Interest by any person or entity that has acquired the Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

**2.6.2** Notwithstanding the foregoing, any entity that is wholly owned by the Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for TxDOT approval, upon delivery to TxDOT of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of TxDOT certifying, representing and warranting such ownership.

**2.6.3** TxDOT shall have no obligation to approve a person or entity as a Substituted Entity unless the Lender demonstrates that (a) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the CDA Documents and Principal Project Documents and (b) the proposed Substituted Entity and its contractors are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest. TxDOT will approve or disapprove a proposed Substituted Entity within 30 days after it receives from the Lender a request for approval together with (i) such information, evidence and supporting documentation concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as TxDOT may request, and (ii) such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, child support statements, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will request information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities. If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of TxDOT and the Lender, TxDOT shall be deemed to disapprove.

**2.6.4** Lender may request approval of more than one Substituted Entity. The Lender may request approval at any time or times. Any approval by TxDOT of a Substituted Entity shall expire one year after the approval is issued, unless TxDOT approves an extension in its sole discretion or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to the Developer's Interest. TxDOT may revoke an approval if at any time prior to succeeding to the Developer's Interest (a) the Substituted Entity ceases to be in compliance with TxDOT's rules and regulations regarding organizational conflicts of interest or (b) there occurs, after exhaustion of all rights of appeal, any suspension or debarment of the Substituted Entity or any managing member, general partner or controlling investor of the Substituted Entity from bidding, proposing or contracting with any federal or State department or agency.

## 2.7 Receivers

**2.7.1** The appointment of a receiver at the behest of Developer shall be subject to TxDOT's prior written approval in its sole discretion. The appointment of a receiver at the behest of the Lender if the Lender is not in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement or Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA shall be void and may be challenged by TxDOT in any proceeding. The appointment of a receiver at the behest of the Lender if the Lender is in compliance with Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.4 of this Agreement or Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 of the CDA shall be subject to the following terms and conditions:

**2.7.1.1** TxDOT's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;

**2.7.1.2** Whenever the Lender commences any proceeding for the appointment of a receiver, it shall serve on TxDOT not less than five days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;

**2.7.1.3** TxDOT may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver, but waives any other right to oppose the appointment of the receiver; and

**2.7.1.4** TxDOT may at any time seek an order for replacement of the receiver by a different receiver.

**2.7.2** No receiver appointed at the behest of Developer or the Lender shall have any power or authority to replace the Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by TxDOT.

## 2.8 Other Lender Rights

**2.8.1** In addition to all other rights herein granted, the Lender shall have the right to be subrogated to any and all rights of Developer under the CDA and the Lease with respect to curing any Developer Default. TxDOT shall permit the Collateral Agent and its Substituted Entity the same access to the Project and Project Right of Way as is permitted to Developer hereunder. TxDOT hereby consents to Developer constituting and appointing any Collateral Agent as Developer's authorized agent and attorney-in-fact with full power, in Developer's name, place and stead, and at Developer's sole cost and expense, to enter upon the Project and Project Right of Way and to perform all acts required to be performed herein, in the Lease, and in any Principal Project Document, but only in the event of a Developer Default or a default under the Lender's Funding Agreement or Security Document. TxDOT shall accept any such performance by the Collateral Agent as though the same had been done or performed by Developer.

**2.8.2** The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of the CDA, the leasehold estate under the Lease or the Developer's Interest, nor shall the Lender, as such, be deemed to be an assignee or transferee of the CDA, the leasehold estate under the Lease or the Developer's Interest so as to require the Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. Neither the Lender, nor any owner of the leasehold estate under the Lease or the Developer's Interest whose ownership

shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of the CDA or the Lease unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest. Upon any permitted assignment of the CDA, the Lease and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to TxDOT a recordable instrument of assumption as required under Section 21.5 of the CDA.

**2.8.3** The Lender or the Collateral Agent may exercise its rights and remedies under its Security Document with respect to all, but not less than all, of the Developer's Interest.

**2.8.4** The exercise by the Lender of its rights with respect to the Developer's Interest under its Security Documents, this Agreement, Article 20 of the CDA, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of TxDOT or constitute a breach of any provision of or a default under the CDA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 2.6 of this Agreement and Section 20.6 of the CDA (and the definition of Substituted Entity).

**2.8.5** Whenever TxDOT obtains knowledge of any condemnation proceedings by a third party affecting the Project or Project Right of Way, it shall promptly give notice thereof to the Lender. The Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and TxDOT hereby consents that the Lender may be made such a party or an intervener.

## **2.9 Consents and Estoppel Certificates**

**2.9.1** At any time and from time to time, within 15 days after written request of the Lender, TxDOT, without charge, shall (a) consent to (i) the exercise by the Lender of its rights under and in accordance with this Agreement and Article 20 of the CDA in the event of a Developer Default and (ii) a pledge or hypothecation by Developer of the Developer's Interest under the CDA to the Lender and (b) certify to its best knowledge by written instrument duly executed and acknowledged, to the Lender as follows:

**2.9.1.1** As to whether the CDA has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;

**2.9.1.2** As to the validity and force and effect of the CDA, in accordance with its terms;

**2.9.1.3** As to the existence of any Developer Default;

**2.9.1.4** As to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default;

**2.9.1.5** As to the then accumulated amount of Noncompliance Points;

**2.9.1.6** As to the existence of any claims by TxDOT regarding the CDA;

**2.9.1.7** As to the Effective Date and the commencement and expiration dates of the Term;

**2.9.1.8** As to whether a specified acceptance, approval or consent of TxDOT called for under the CDA has been granted;

**2.9.1.9** Whether the Lender and its Funding Agreements and Security Documents meet the conditions and limitations set forth in Sections 4.3 and 20.1 of the CDA and Section 2.1 of this Agreement; and

**2.9.1.10** As to any other matters of fact within TxDOT's knowledge about the CDA Documents, the Principal Project Documents, Developer, the Project or the Work as may be reasonably requested.

**2.9.2** TxDOT shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to TxDOT either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

**2.9.3** Any such certificate may be relied upon by, and only by, the Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on TxDOT.

## **2.10 No Surrender**

No mutual agreement to cancel or surrender the CDA or the Lease shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain.

## **ARTICLE 3. CONTRACT PERIOD**

This Agreement shall become effective when executed by all parties. The Agreement shall terminate upon the occurrence of any of the following:

(a) If the CDA is terminated and the Lender does not have a right to a New Agreement, upon termination of the CDA;

(b) If the CDA is terminated and the Lender does have a right to a New Agreement, upon lapse without proper exercise of the right to obtain a New Agreement;

(c) Upon the Lender or a Substituted Entity that is affiliated with the Lender (or any other participating Lenders) succeeding to the Developer's Interest;

(d) Upon release and reconveyance by the Lender of all or any portion of its security interest in the Developer's Interest;

(e) Upon any change in circumstances rendering the Lender ineligible under the terms of this Agreement (i.e., those corresponding to Section 2.1 of this Agreement and Section 20.1 of the CDA) for the rights and protections set forth in this Agreement; or

(f) Upon the natural expiration of the Term of the CDA.

#### **ARTICLE 4. SIGNATORY WARRANTY**

**4.1** The undersigned signatory for the Lender hereby represents and warrants that he or she is an officer of the Lender organization for which he or she has executed this Agreement and that he or she has full and complete authority to enter into this Agreement on behalf of the Lender organization. These representations and warranties are made for the purpose of inducing TxDOT to enter into this Agreement.

**4.2** The undersigned signatory for TxDOT hereby represents and warrants that he or she is an officer of TxDOT and has full and complete authority to enter into this Agreement on behalf of TxDOT. These representations and warranties are made for the purpose of inducing the Lender to enter into this Agreement.

#### **ARTICLE 5. GENERAL PROVISIONS**

##### **5.1 Public Information and Confidentiality**

TxDOT will comply with Government Code, Chapter 552, the Public Information Act, and 43 Texas Administrative Code §3.10 et seq. in the release of information related to this Agreement.

##### **5.2 Amendments and Waivers**

**5.2.1** No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

**5.2.2** The exercise by a Party of any right or remedy provided under this Agreement or applicable law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by either party of any right or remedy under this Agreement or applicable law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or applicable law. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

##### **5.3 Noncollusion**

**5.3.1** The Lender warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Lender, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

**5.3.2** For breach or violation of this warranty, TxDOT shall have the right to terminate this Agreement without liability. No such termination shall affect the Lender's rights under Article 20 of the CDA.

## **5.4 Gratuities**

**5.4.1** Texas Transportation Commission policy mandates that employees of the Texas Department of Transportation shall not accept any benefit, gift or favor from any person doing business with or who reasonably speaking may do business with the State under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

**5.4.2** Any person doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offer of benefits, gifts or favors to department employees, except as stated above. Failure on the part of the Lender to adhere to this policy may result in the termination of this Agreement. No such termination shall affect the Lender's rights under Article 20 of the CDA.

## **5.5 Disputes**

**5.5.1** In the event of any dispute between TxDOT and the Lender under this Agreement, the parties shall resolve the dispute according to the Dispute Resolution Procedures, with the Lender having the same rights and obligations of Developer under the Disputes Resolution Procedures and having the obligation to enter into an identical Disputes Board Agreement (other than substitution of the Lender for Developer). If, however, any such dispute arises out of the same set of facts and circumstances that gives rise to a Dispute or Claim by Developer, then TxDOT shall have the right, without consent from members of any Disputes Board, to consolidate the disputes, claims and proceedings into one proceeding under the Disputes Board Agreement between Developer and TxDOT.

**5.5.2** Nothing in Section 5.5.1 of this Agreement affects Lender rights and remedies against Developer and the Developer's Interest under the Lender's Funding Agreements and Security Documents or the procedures available to the Lender under applicable Law to exercise its security interests thereunder. Nothing in Section 5.5.1 of this Agreement changes or affects the Lender's rights of joinder of TxDOT as a necessary party to the extent provided in Section 4.3.10 of the CDA.

## **5.6 Successors and Assigns**

This Agreement shall bind and inure to the benefit of TxDOT and the Lender and their respective successors and assigns. The Lender shall not assign, subcontract or transfer its interest in this Agreement separately from its interests in the Lender's Funding Agreements and Security Documents relating to the loan it has made available to Developer for the Project; and any attempt at such assignment, subcontracting or transfer shall be null and void.

## **5.7 Severability**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be

construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**5.8 Prior Contracts Superseded**

Except for the Lender's third party beneficiary rights under the CDA, this Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

**5.9 Notices and Communications**

**5.9.1** All notices, correspondence, and other communications under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

**5.9.2** All notices, correspondence and other communications to Lender shall be delivered to the following address:

[Lender address]

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**5.9.3** All notices, correspondence and other communications to TxDOT shall be marked as regarding the IH 635 Managed Lanes Project and shall be delivered to the following address:

Texas Department of Transportation  
4777 E. Highway 80  
Mesquite, Texas 75150-6643  
Attn: Gary L. Moonshower, P.E.  
Telephone: (214) 320-4489  
Facsimile: (214) 320-6117  
E-mail: gmoonsh@dot.state.tx.us

In addition, copies of all notices regarding disputes shall be delivered to the following person:

Texas Department of Transportation  
Office of General Counsel  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701  
Telephone: (512) 463-8630  
Facsimile: (512) 475-3070  
E-mail: jingram@dot.state.tx.us

**5.9.4** Notices, correspondence, and communications shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

#### **5.10 Governing Law**

This Agreement shall be governed by the laws of the State of Texas.

#### **5.11 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 WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

**Lender**

**TxDOT  
TEXAS DEPARTMENT OF  
TRANSPORTATION**

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

By: \_\_\_\_\_  
Name: Amadeo Saenz, P.E.  
Title: Executive Director

**EXHIBIT A**

**Option Consideration for Extension of Long Stop Date**

The consideration for each of the Collateral Agent's options to extend the Long Stop Date as set forth in Section 2.4.9.1 of this Agreement shall equal \$4,500,000.

**EXHIBIT 13**

**FORM OF TXDOT TOLLING SERVICES AGREEMENT**

[Attached]

**TOLLING SERVICES AGREEMENT**  
**IH 635 MANAGED LANES PROJECT**

**Between**

**TEXAS DEPARTMENT OF TRANSPORTATION**

**and**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware Limited Liability Company

Dated \_\_\_\_\_, 20\_\_

## TABLE OF CONTENTS

	<u>Page</u>
1. Definitions and Interpretation.....	1
2. Engagement and General Statement of Responsibilities .....	2
3. Term; Transition of Services.....	4
4. Toll Collection and Enforcement Services .....	6
5. Financial Interoperability Functions and Terms.....	13
6. Compensation for Services.....	13
7. Toll Transaction Payments to Developer .....	20
8. Video Transactions.....	22
9. Transponder Transactions.....	24
10. No Duty to Enforce, Collect or Pay .....	25
11. Overcharges; Credits to Account Holders.....	26
12. System Technology Interface; Interoperability .....	27
13. Intellectual Property and Licensing; Promotional Plan .....	29
14. Reports; Developer Protection of Patron Confidential Information .....	30
15. Records and Audit Rights .....	32
16. [RESERVED].....	33
17. Change Orders and Change Directives .....	33
18. Representations and Warranties; Covenant Regarding Developer Existence and Good Standing .....	37
19. Default and Remedies .....	39
20. Dispute Resolution .....	46
21. [RESERVED].....	47
22. Malfunction, Damage or Destruction of TxDOT Facilities.....	47
23. Assignment; New TSA.....	49
24. Special Provisions for Compliance with Agreement.....	50

25.	Labor Practices .....	51
26.	Designation of Authorized Representatives .....	51
27.	Notices .....	52
28.	[RESERVED].....	53
29.	Amendment.....	53
30.	Independent Engineer .....	53
31.	Non-Disparagement .....	54
32.	Governing Law .....	54
33.	Interpretation .....	54
34.	Counterparts.....	54
35.	Modification of Base Transaction Fee and Variable Transaction Fee Related to Tolling Commencement for Project Segments Rather than the Project as a Whole .....	54

**Attachments**

Attachment 1 Definitions

Attachment 2 Performance Standards and Non-Compliance Points

Attachment 3 Interface Control Document

Attachment 4 List of Transponder Models Establishing Benchmark Transponder  
Performance

Attachment 5 [Reserved]

Attachment 6 [Reserved]

Attachment 7 Initial Designation of Authorized Representatives

Attachment 8 Example of Calculation of Delinquent Payment Deduction

Attachment 9 Example of Calculation of Non-Compliance Deduction

## TOLLING SERVICES AGREEMENT

THIS TOLLING SERVICES AGREEMENT (the "Tolling Services Agreement") is entered into and effective as of \_\_\_\_\_, 20\_\_ by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and LBJ Infrastructure Group LLC, a Delaware limited liability company ("Developer"), with reference to the following facts.

### RECITALS

A. On \_\_\_\_\_, 2009, the Texas Department of Transportation ("TxDOT") and Developer have entered into a Comprehensive Development Agreement (the "Agreement") to develop, design, construct, finance, operate and maintain the IH 635 Managed Lanes Project (the "Project"), consisting of the reconstruction of general purpose lanes, construction of managed lanes, and construction of new and reconstruction of existing frontage roads, crossing streets and utility adjustments, and the establishment of tolling operations and maintenance and operation of the IH 635 managed lane corridor in Dallas County, Texas.

B. Pursuant to the Agreement, Developer has the right and obligation to, among other things, impose, collect and enforce tolls for use of the Project by means of an Electronic Toll Collection System.

C. Developer entered into a Tolling Services Agreement with North Texas Tollway Authority ("NTTA") pursuant to the Agreement, for NTTA to provide certain toll collection, enforcement and interoperability functions and services for the Project.

D. Pursuant to Section 8.7.5 of the Agreement, TxDOT agreed to provide such toll collection, enforcement, and interoperability functions and services to the Project if the conditions and/ or circumstances set forth therein were to occur.

E. On \_\_\_\_\_, 20\_\_ Developer exercised its option pursuant to Section 8.7 of the Agreement with regard to such toll collection, enforcement and interoperability functions and services for the Project. TxDOT is willing to provide such services for Developer on and subject to the terms and conditions of this Tolling Services Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in this Tolling Services Agreement, TxDOT and Developer agree as follows:

#### 1. Definitions and Interpretation

- (a) Certain terms used herein have the respective definitions set forth in Attachment 1 to this Tolling Services Agreement.
- (b) Other capitalized terms used but not defined herein have the respective meanings set forth in the Agreement.
- (c) Notwithstanding anything to the contrary set forth herein, any reference made in this Tolling Services Agreement to the practices and procedures that TxDOT follows in respect of its own facilities in respect of the

standards or type of services to be provided pursuant to this Tolling Services Agreement shall be deemed to include at a minimum performance at a level which is consistent with the practices and procedures of TxDOT at the time of execution of this Tolling Services Agreement, and with the Performance Standards under or other requirements of this Tolling Services Agreement.

## 2. Engagement and General Statement of Responsibilities

Developer hereby engages TxDOT to provide the services described herein during the Term (as defined herein), and TxDOT hereby accepts such engagement. The Parties' general responsibilities under this Tolling Services Agreement include the following (with the following general description to be without limitation on the parties' respective other responsibilities and obligations provided for pursuant to the other terms and conditions of this Tolling Services Agreement):

- (a) Developer's general responsibilities include:
  - (i) Developer shall install, replace and maintain in good condition throughout the Term equipment that complies with the requirements of the Agreement and that will identify vehicles equipped with a transponder issued by TxDOT (either directly by TxDOT or through a TxDOT-approved distributor) or another Toll Operator and video equipment and related lane controller equipment designed to capture video images of and/or data concerning vehicles passing through tolling stations as required by the Interface Control Document.
  - (ii) Developer shall be responsible for capturing data evidencing each Transponder Transaction and Video Transaction and transmitting a properly formed Transaction to TxDOT (which will include all of the information required by the ICD for each such Transaction) in accordance with this Tolling Services Agreement pursuant to the ICD or any other communications protocols in effect hereunder from time to time. Without limiting the foregoing, Developer shall be responsible for (A) determining the applicable toll for each Transaction and transmitting the applicable toll information to TxDOT with its transmittal of other Transaction data pursuant to the preceding sentence, and (B) conducting all video image reviews and Transaction matching required to determine Video Transactions. TxDOT shall not have any responsibility for any of the activities described above in this paragraph (ii). Responsibility for enforcement of high occupancy vehicle rules and requirements is exclusively governed by the Agreement.

- (iii) Developer shall be responsible for all interoperable fees, the cost of which shall be paid in accordance with the applicable interoperability interlocal agreement.
- (iv) Developer shall be responsible for providing reasonably detailed information to TxDOT from time to time for purposes of training TxDOT's customer service personnel adequately to respond to customer inquiries concerning Developer's dynamic or other toll pricing models.
- (v) Developer shall not issue any transponders to or impose any tolls on Users in connection with the Project other than as permitted or contemplated by this Tolling Services Agreement, and Developer otherwise shall not take any actions in competition with the rights and responsibilities of TxDOT hereunder (provided, however, that the foregoing shall not preclude Developer from marketing activities, from distributing TxDOT-issued transponders on its own premises in its capacity as a distributor of TxDOT, from exercising rights and remedies expressly provided to Developer hereunder in respect of this Tolling Services Agreement or in the Agreement in respect of the Agreement, and activities of Developer or any of its affiliates in connection with other toll roads).

(b) TxDOT's general responsibilities include:

- (i) TxDOT shall post Transponder Transactions to customer accounts in accordance with Section 4(a)(iv) hereof.
- (ii) TxDOT shall provide Interoperability Functions in accordance with Section 5 hereof.
- (iii) TxDOT shall process Video Transactions in accordance with Section 8 hereof.
- (iv) TxDOT shall remit payments to Developer in respect of Video Transactions and Transponder Transactions in accordance with Section 7 hereof.
- (v) TxDOT shall utilize and make available its Customer Service Center services for handling of customer inquiries and complaints, as provided in Section 4(a)(i) hereof.
- (vi) TxDOT shall provide account management and other back office services in accordance with this Tolling Services Agreement, including Section 4(a) hereof.
- (vii) TxDOT shall provide toll collection enforcement services, which shall include transmittal of violation notices, collection efforts (including, at TxDOT's option, utilization

of a third party collection agency) and other actions permitted by applicable Law (including court action) and in accordance with the Performance Standards and the practices and procedures that TxDOT follows in respect of its own facilities.

- (c) Developer and TxDOT acknowledge and agree that, particularly in view of the stated Term (as defined in the Agreement) of the Agreement and the Term of this Tolling Services Agreement, changes may occur during the Term in mobility and tolling equipment, technology and operations, interoperability standards and protocols and in business and commercial practices that may warrant the Parties' consideration and implementation of changes in the equipment, technology or practices utilized in connection with the Project and/or changes to this Tolling Services Agreement and the Parties' respective responsibilities and obligations hereunder in order to more effectively provide for the performance of the services contemplated and intended by this Tolling Services Agreement. Developer and TxDOT further acknowledge that Developer may need to change equipment, technology and practices to maintain interoperability as required by Section 12.1.3 of the Agreement. Developer and TxDOT agree to cooperate with each other in a commercially reasonable manner in considering any such changes and to implement the same to the extent such implementation may be achieved in a commercially reasonable manner and the proposed changes are consistent with technology and practices then used and/or followed by TxDOT with respect to its own facilities. In connection therewith, Developer and TxDOT also shall consider in good faith any adjustments (if any) in the compensation payable to TxDOT hereunder in light of such changed circumstances. Any such changes shall be made in accordance with Section 17.
- (d) TxDOT shall put into effect the Custodial Arrangements as and when set forth in Section 8.7.7 of the Agreement. For the avoidance of doubt, TxDOT hereby disclaims any interest in funds owing or remitted to TxDOT by a User for a Transaction to the extent of amounts owed by TxDOT to Developer for such Transaction that have not yet been paid to Developer. TxDOT, via the Custodial Arrangements, shall be deemed to be a collecting agent acting on behalf of Developer with respect to such amounts owing or remitted by the applicable Users and owed to and not yet paid to the Developer until TxDOT pays Developer the applicable amounts owed to Developer with respect to the Transaction, at which time TxDOT may, through the Custodial Arrangements, receive and retain the corresponding amounts from applicable Users for its own account and as its own funds.

3. Term; Transition of Services

- (a) The term (the "Term") of this Tolling Services Agreement commences on the date hereof and, subject to earlier termination in accordance with Section 19, shall expire either:

- (i) If this Tolling Services Agreement is entered into pursuant to Section 8.7.5 of the Agreement, then the later of (A) five years after the Cutover Date or (B) on the date the NTTA fully cures its default under the NTTA Tolling Services Agreement and completes transfer of TxDOT's services, functions, rights and responsibilities back to the NTTA in accordance with a transition plan and schedule reasonably approved by TxDOT, Developer and the NTTA; or
  - (ii) If this Tolling Services Agreement is entered into pursuant to Section 8.7.6 of the Agreement, then two years after the Cutover Date.
- (b) Developer and TxDOT shall cooperate and coordinate to transition customer service, back office services and electronic funds transfer functions from NTTA to TxDOT in accordance with the transition plan adopted by Developer and NTTA under the NTTA Tolling Services Agreement and consistent with TxDOT's systems and procedures, in order to avoid interruption of toll collection and enforcement for the Project. If Developer diligently assists and cooperates with TxDOT and if such transition plan is consistent with TxDOT's systems and procedures, TxDOT will be ready and able to commence provision of customer service, back office services and electronic funds transfer functions for Developer within six months of the execution of this Tolling Services Agreement. As part of such cooperation and coordination, Developer and TxDOT shall commence performing system interface work in accordance with the schedule developed under Section 12(c).
- (c) At the end of the Term or upon earlier termination of this Tolling Services Agreement, TxDOT shall reasonably assist and cooperate with Developer and its replacement contractor for toll collection, enforcement, and related services to provide a smooth transition of services from TxDOT to Developer and its replacement contractor. Six months after the date of this Tolling Services Agreement, (or any other date mutually agreed in writing), the Parties shall, at their cost, cooperate with each other in order to prepare, on or prior to the date that is six months after the Cutover Date, a mutually acceptable transition plan (with each Party agreeing not to unreasonably withhold its approval or assent thereto). The transition plan shall set forth protocols, procedures and terms for (i) the transition of collection and enforcement services from TxDOT to Developer or its designee respecting Transponder Transactions and Video Transactions and related Transaction data transmitted to TxDOT but for which tolls have not been collected prior to the expiration or earlier termination of this Tolling Services Agreement; and (ii) the delivery by TxDOT to Developer, on or prior to the expiration or earlier termination of this Tolling Services Agreement, of reports of (A) Transactions occurring during the Term for which TxDOT has collected and remitted tolls to Developer and received the related fees and other amounts payable to TxDOT hereunder; (B) Transactions occurring during the Term for which TxDOT has collected and remitted tolls to Developer hereunder but has not received all of the related fees and other amounts payable to TxDOT hereunder;

and (C) with respect to Transactions that have occurred and the data for which has been transmitted by Developer to TxDOT but for which TxDOT has not collected and remitted tolls to Developer or received any fees or other amounts payable to TxDOT hereunder, TxDOT shall transfer such Transactions to Developer, together with any information that TxDOT has relating to such Transactions that may reasonably assist Developer in the collection of tolls for such Transactions. If TxDOT has made payment to Developer under the terms of this Tolling Services Agreement with respect to any Transactions that TxDOT has not collected or with respect to which TxDOT has not received Incidental Charges associated with such Transactions, at the expiration or termination date, TxDOT shall be entitled (and Developer shall have no obligation) to enforce and collect such Transactions in the same manner as had been in effect immediately before the expiration or termination date. The foregoing does not obligate TxDOT to provide professional consulting services for transition planning, except pursuant to a Change Order. Other than Transaction information described above, in no event shall the transition plan require TxDOT to disclose to Developer TxDOT's proprietary information or processes. The Parties will cooperate to update the transition plan once every two years, if applicable (or annually if reasonably requested by either Party due to any change in circumstances). With respect to any termination of this Tolling Services Agreement other than due to a default by TxDOT, TxDOT shall be entitled to payment from Developer of the costs and expenses incurred by TxDOT in connection with the services and reports to be furnished by TxDOT to Developer pursuant to provisions of this Section 3(c) and such transition plan.

#### 4. Toll Collection and Enforcement Services

- (a) TxDOT shall provide complete back office functions pertaining to toll collection and enforcement for the Project, consistent with the practices utilized by TxDOT with respect to its own facilities. Such functions shall include the following:
  - (i) Customer service operations providing all customer service representatives with access to all electronic account and toll violation information and ability to resolve most issues or questions with the customer (including HOV customers) through various contact channels, including (A) transponder distribution support, (B) walk-in customer service and support, (C) staffing and maintaining call center operations for customer and general inquiries with sufficient call handling capacity to answer calls in accordance with the Performance Standards, (D) operating and maintaining an industry-standard interactive voice response system in English and Spanish configured to allow customers, without charge, to obtain automated information, to transfer or be directed to a specific source of information, to access account maintenance functions and to speak in English or Spanish with a live customer service representative, (E) creating and managing an

industry standard interactive web site, with the customer service center portion of the web site in English and Spanish, which may be used for disseminating information on TxDOT's transponder program and allowing a customer to conduct secure account maintenance activities such as opening an account, changing information on an account, viewing account status and statements, replenishing an account balance and with a posted privacy notice, and such web site shall allow dissemination and receipt of information simultaneously with multiple users without unreasonable delay in responses, (F) maintaining an Internet e-mail address for all inquiries and comments regarding account maintenance matters from customers and the public, (G) receipt of and response to e-mails on a timely basis during normal business hours, and (H) the ability of customers to send facsimile communications to the customer service center 24 hours per day seven days per week, and responding to such communications during normal business hours; however, notwithstanding the foregoing, Developer acknowledges that because Developer, not TxDOT, is responsible for collecting in-lane data in respect of the Project, TxDOT may not be able to resolve HOV customer complaints regarding whether the customer was improperly charged a single occupancy vehicle toll rate rather than an HOV toll rate, or other HOV-related disputes, questions, or inquiries, including, but not limited to, issues regarding implementation of HOV policies; therefore, TxDOT shall not be adversely affected with regard to its compliance with Performance Standards in connection with its handling of any HOV disputes (it being understood and agreed that to the extent that TxDOT is reasonably able to resolve such disputes, it shall do so);

- (ii) Account management and maintenance, including setting up new personal and commercial accounts, managing transponder replacement, automatic replenishing of TxDOT accounts to pre-determined levels when accounts reach low balance thresholds, accepting payments (pursuant to payment methods consistent with those utilized by TxDOT with respect to its own facilities) to replenish accounts, and issuing monthly statements to TxDOT account holders (or other frequency as may be agreed between TxDOT and such account holders) providing an activity summary that itemizes usages, related toll charges and other Incidental Charges;
- (iii) Transponder issuance and replacement;
- (iv) Transaction and payment processing for Transponder Transactions, including posting Transponder Transactions

against User transponder accounts, and debiting accounts for toll charges and Incidental Charges on a "first in" basis according to the date and time received by TxDOT, all subject to the Custodial Arrangements;

- (v) Transaction and payment processing for Video Transactions consistent with TxDOT's practices regarding customers of its own facilities, including issuing billing statements to Video Transaction Users with itemization of toll charges and Incidental Charges, processing of payments received including reconciliation with billing statements, and accepting payment (pursuant to payment methods consistent with those utilized by TxDOT with respect to its own facilities), all subject to the Custodial Arrangements;
  - (vi) Violation processing and enforcement in accordance with Chapter 228 of the Texas Transportation Code or other Laws applicable to TxDOT and consistent with TxDOT's practices regarding customers of its own facilities;
  - (vii) Implementation of appropriate reporting, reconciliation, accounting, audit and quality assurance processes in accordance with Good Industry Practice, including internal controls to minimize the possibility of inadvertent and illegal diversion of Toll Revenues, and including (A) controlled access to all TxDOT computer systems and subsystems, (B) control by user group scheme, (C) state of the art virus protection and firewall software and (D) maintaining a secure record of system access and breaches of security, consistent with Good Industry Practice;
  - (viii) Implementation of data backup and disaster recovery in accordance with Good Industry Practice and retention of Project-related data in accordance with Section 15(d);
  - (ix) Provision to the appropriate governmental agencies or entities of the State of Texas of the calculation and information required to be furnished by TxDOT pursuant to Section 228.0055(b) of the Texas Transportation Code (or any successor law thereto); and
  - (x) Provision of all staffing, supervision, support services, data services, CSC Host equipment, and materials necessary to perform such responsibilities in a timely manner.
- (b) Provided TxDOT complies with Section 4(a)(vi), decisions on whether and when to issue notices and pursue collection and enforcement actions shall be within the discretion of TxDOT. TxDOT shall exercise such

discretion in the manner it makes such decisions with respect to its own tolled roadways and in accordance with Good Industry Practice.

- (c) TxDOT shall solely choose the transponders to offer to Users, consistent with Section 21 of the Technical Provisions and Section 12(h); provided that Developer reserves the right (but is not obligated) to issue its own transponders that are equivalent in utility, functionality and reliability to those issued by TxDOT to any Person from and after the date either Party delivers written notice to the other Party exercising a right to terminate this Tolling Services Agreement (so long as any such notice is not rescinded). TxDOT shall issue and replace transponders expeditiously, consistent with the time periods applicable for replacement of transponders in respect of its own facilities. TxDOT shall replace its transponders whenever a customer requests replacement, and shall be entitled to collect its standard charges therefor applicable to similar transponders issued by TxDOT. TxDOT shall include transponder mounting instructions with new transponders supplied to customers, and provide transponder mounting assistance at TxDOT's customer service center or outlets to support successful installation consistent with the level of service provided customers on TxDOT's own facilities.
- (d) TxDOT shall be responsible for taking reasonable steps to minimize the number of toll violations due to misuse (e.g. improper mounting or absence of transponder) by TxDOT account customers. Such responsibility shall include but not be limited to (i) providing clear transponder mounting instructions and assisting with mounting, if requested, as provided in subsection (c) above, (ii) identifying and contacting TxDOT account holders identified through Video Transactions or that incur violations, (iii) contacting TxDOT account holders to ascertain the reasons for such Video Transactions or violations and (iv) resolving such situations if reasonably possible (e.g. providing mounting instructions/assistance or a replacement transponder or obtaining updated account information). TxDOT shall take such steps consistent with its practices regarding customers of its own facilities.
- (e) TxDOT shall determine the location or locations of its call center operations and TxDOT's CSC Host. TxDOT may change any such location from time to time. If TxDOT changes any such location from the original location, it shall bear all costs of re-establishing necessary connections between the ETCS to the newly located TxDOT CSC Host equipment in connection with such relocation. Upon the request of either Party, the Independent Engineer shall review such costs and advise the Parties concerning the accuracy of any statement thereof. Developer shall provide data to, and receive data from, TxDOT by means of the ETCS and its interface with TxDOT's CSC Host so as to enable TxDOT to enforce and collect all toll payments from Users in a timely, accurate and efficient manner.
- (f) TxDOT may establish and enforce reasonable minimum amounts for opening, maintaining and replenishing electronic tolling accounts,

consistent with TxDOT's practices regarding customers of its own facilities.

- (g) TxDOT shall provide credit card processing services to its customers and Video Transaction Users for all major credit cards consistent with its practices regarding customers of its own facilities.
- (h) TxDOT shall provide the foregoing services in accordance with the Performance Standards, the applicable provisions and requirements of this Tolling Services Agreement, and to the extent equal to or better than the foregoing requirements and standards, TxDOT also shall provide the foregoing services in accordance with TxDOT's standard management practices, procedures and protocols with which it performs such services and functions for its own facilities.
- (i) TxDOT shall be temporarily excused from complying with the requirements and standards set forth in Section 4(h) to the extent its inability to comply is directly attributable to any failure or inability of Developer to comply with the Interface Control Document, or to meet the ETCS performance requirements set forth in Section 21.5 of the Technical Provisions. TxDOT shall bear the burden of providing evidence reasonably satisfactory to Developer that TxDOT exercised diligent efforts to comply.
- (j) TxDOT will provide Developer access to standardized toll collection system reports described in Section 14 hereof by means of a secure website/portal.
- (k) Developer and TxDOT shall conduct regular meetings (the "Developer-TxDOT Regular Meetings") at least once per month, or such other frequency as the Parties mutually approve, to review, discuss and resolve matters relating to coordination, services, quality control, performance, customer service, tolling (including any issues related to erroneous pricing set by Developer or billing by TxDOT and "readability" of transferred video images), payment and other matters arising under this Tolling Services Agreement. The Parties shall schedule all meetings at a mutually convenient date, time and place. In addition to regularly scheduled meetings, Developer and TxDOT shall cause their respective representatives to be available at all reasonable times (generally, during regular business hours) for consultation with one another and with the Independent Engineer.
- (l) Unless added by Change Order, TxDOT shall have no right or obligation to provide under this Tolling Services Agreement (i) storefront services except such services at TxDOT's customer service centers, (ii) any public relations work for the Project, other than customer relations in the ordinary course of handling customer accounts, inquiries and communications, (iii) maintenance of a Project web site (as distinguished from TxDOT's own web site and web-based customer service center required by Section 4(a)(i)(E) and (F)), (iv) any marketing or promotional work or services for the Project, other than customer relations, and (v)

any maintenance work on Developer's toll collection system. In no event, however, shall TxDOT be prohibited from providing any such services in connection with its own facilities or those of any third party.

- (m) TxDOT recognizes that Developer is not entitled to charge tolls to Users with respect to any applicable portion of the Project during an Emergency Mode. Developer shall not transmit transaction data to TxDOT during such periods. If Developer does so, and if TxDOT reviews any such Transaction data, TxDOT may charge Developer the Transaction fees and charges otherwise applicable to non-emergency Transactions hereunder (including, but not limited to, Base Transaction Fees and Variable Transaction Fees). However, TxDOT shall have no obligation to review any data transmitted in connection with Emergency Mode transactions. In the event Developer transmits to TxDOT's CSC Host any Transaction that is for an Exempt Vehicle or that is a Duplicate Transaction, TxDOT also may charge Developer the Transaction fees and charges otherwise applicable to non-Exempt vehicles or non-Duplicate Transactions (as the case may be) hereunder (including, but not limited to, Base Transaction Fees and Variable Transaction Fees).
- (n) TxDOT shall maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices and handle such information in accordance with this Section 4(n).

- (i) TxDOT acknowledges that the data generated by, or accumulated or collected in connection with, its services under this Tolling Services Agreement, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Project and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("Patron Confidential Information"). Patron Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or other information that relates to any of these types of information.

- (ii) TxDOT shall comply with all applicable Laws, Technical Provisions and interoperability and compatibility standards, requirements and protocols developed by TxDOT and the state's other Toll Operators limiting, restricting or pertaining to collection, use, confidentiality,

privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information (“Statewide Confidentiality Protocols”).

- (iii) TxDOT agrees to hold Patron Confidential Information relating to the use of the Project in strictest confidence and not to make use of Patron Confidential Information relating to the use of the Project for any purpose other than the performance of this Tolling Services Agreement, including toll violation processing and collection; provided, however, that to the extent Patron Confidential Information has been provided to TxDOT in connection with its operation of its own facilities or its provision of services to other Toll Operators, TxDOT may use and retain such Patron Confidential Information as permitted by applicable Law and any applicable Statewide Confidentiality Protocols, notwithstanding anything to the contrary contained in this Tolling Services Agreement.
  - (iv) TxDOT shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information relating to the use of the Project, or otherwise make it known, to any other Person except as permitted or required by applicable Laws. TxDOT shall implement physical, electronic and managerial safeguards to prevent unauthorized access to Patron Confidential Information and to implement destruction of records containing Patron Confidential Information in accordance with its practices and procedures regarding customers of its own facilities.
  - (v) TxDOT shall disclose in writing to each User to whom TxDOT issues a transponder and for whom it holds Patron Confidential Information TxDOT’s policies regarding privacy of Patron Confidential Information, consistent with this Section 4(n). TxDOT shall deliver such written disclosure in an applicable end user agreement, and shall maintain such disclosure on its web site. TxDOT shall comply with the provisions of any applicable Law prescribing disclosure of TxDOT privacy policies, including provisions on the content of disclosures and when disclosure must be given, and such compliance shall be deemed compliance with the disclosure requirements of this Section 4(n).
  - (vi) TxDOT’s obligations relating to Patron Confidential Information shall survive expiration or termination of this Tolling Services Agreement.
- (o) In connection with any dispute regarding a Transaction, including in connection with enforcement and collection proceedings brought to collect tolls owed with respect to the Transaction, at TxDOT’s request

Developer, at its expense, shall provide reasonable assistance and cooperation to evidence the proper operation of the ETCS and data transmission to the TxDOT's CSC Host at the time of the Transaction.

- (p) Developer generally intends to obtain prepayment of tolls or otherwise handle on its own payment of tolls for operators of Special Vehicles on the Project and therefore not to involve TxDOT in transaction processing for Special Vehicles. However, the Parties recognize that Video Transactions regarding Special Vehicles may be transmitted to TxDOT's CSC Host because a Special Vehicle has operated on the Project without obtaining a permit and pre-paying a toll. In the event TxDOT receives a Video Transaction identified in the User Classification of a Special Vehicle, and if the Special Vehicle is not an Exempt Vehicle, then TxDOT shall process such Video Transaction as it customarily processes other Video Transactions.
- (q) TxDOT shall have the right to use the brand name "TxTag" and/or "Texas Tollways," rather than or in addition to the official name of TxDOT, in its communications and dealings with Users and customers. Wherever in this Tolling Services Agreement a provision relating to TxDOT's communications and dealings with Users and customers refers to "TxDOT," it shall be construed consistently with this provision.

5. Financial Interoperability Functions and Terms

- (a) TxDOT will establish and implement Interoperability Functions to coordinate the settlement and payment of electronic toll charges for Transponder Transactions by vehicles equipped with transponders issued by Transponder Issuers other than TxDOT. TxDOT will allow the Interoperability Functions to evolve to meet the needs of an increasing number of Transponder Issuers.
- (b) Developer hereby agrees to adhere to TxDOT's practices and procedures concerning compliance with applicable interoperability rules and guidelines by which all Persons involved in the Interoperability Functions will provide data for the transfer of funds (provided that TxDOT will keep Developer regularly informed of such practices and procedures). TxDOT shall pay Developer the amount of the toll less the interoperability fee (and less the Base Transaction Fee payable to TxDOT) (and subject to any adjustments provided for in Section 6(a)(ii)) for Interoperable Transactions.

6. Compensation for Services

(a) Fees and Deductions.

- (i) In consideration for TxDOT's services hereunder, Developer shall pay TxDOT the following fees:
  - (A) The Base Transaction Fee provided for in Section 6(b); plus

- (B) The Variable Transaction Fee provided for in Section 6(c).
- (ii) The Base Transaction Fee (as calculated pursuant to Section 6(b)) and the Variable Transaction Fee (as calculated pursuant to Section 6(c)) payable to TxDOT shall be subject to reduction (pursuant to Section 6(h)) by the following:
  - (A) The Delinquent Payment Deduction, calculated in accordance with Section 6(d); and
  - (B) The Non-Compliance Deduction, if any, calculated in accordance with Section 6(e).

The amount payable to TxDOT pursuant to Section 6(a)(i), net of deductions provided for in this Section 6(a)(ii), is referred to in this Tolling Services Agreement as the "TxDOT Compensation."

- (iii) The TxDOT Compensation is inclusive of all services required under this Tolling Services Agreement, other than those added by Change Order or Change Directive. Without limiting the foregoing, TxDOT expressly acknowledges that Developer shall have no obligation to compensate TxDOT over and above the TxDOT Compensation for any merchant bank charges or bank commissions or fees incurred by TxDOT for account replenishment and for any other forms of User payment methods which involve a bank (such as check, credit card, debit card, internet payments and wire transfers), or in the case of Video Transactions, for back-office work and services provided by TxDOT hereunder in respect of Video Transactions (including billing and processing payments for Video Transactions), costs of enforcement and collection, including costs of collection agencies and costs of pursuing collection in court, or of risks of inability to collect Video Transactions. This provision does not limit TxDOT's right to charge Incidental Charges to customers and Users to the extent set forth in Section 6(f), or TxDOT's right to additional compensation from Developer pursuant to Section 6(g).

(b) Base Transaction Fee.

- (i) The Base Transaction Fee for each Transaction received by TxDOT's CSC Host shall be as follows.
  - (A) For Transactions occurring prior to the anniversary of the Service Commencement Date for the Project (or, subject to Section 36, the initial Project Segment, if Developer develops the Project in Project Segments) occurring in 2016, the Base Transaction Fee shall be four and one-half cents (\$0.045) per Transaction; and
  - (B) The Base Transaction Fee per Transaction shall increase (rounded to the nearest 1/10<sup>th</sup> cent) on the anniversary of

the Service Commencement Date for the Project (or, subject to Section 36, the initial Project Segment, if Developer develops the Project in Project Segments) occurring in 2016 and every two years thereafter (i.e., on the second anniversary thereafter, fourth anniversary thereafter, sixth anniversary thereafter, etc.) based on an escalation rate equal to two percent (2.0%) per annum.

- (ii) The applicable Base Transaction Fee shall be due and payable for each Transaction (whether a Transponder Transaction, Video Transaction or Interoperable Transaction) that is recognized by the ETCS and properly transmitted to TxDOT's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon in writing by the Parties pursuant to Section 8(f) or 9(e)) and shall be paid to TxDOT by TxDOT's deduction of the amount thereof from the amount of each toll transaction payment made by TxDOT to Developer pursuant to Section 7 hereof. Base Transaction Fees shall be the same for all User Classifications and for all Transactions in the same Service Year, regardless of the amount of the toll for such Transactions.

(c) Variable Transaction Fee.

- (i) Subject to Section 36, the Variable Transaction Fee for each Transaction (other than Interoperable Transponder Transactions, which shall not be subject to the Variable Transaction Fee) received by TxDOT's CSC Host shall be equal to three and three-quarters percent (3.75%) of the applicable toll amount (exclusive of Incidental Charges).
- (ii) The Variable Transaction Fee shall be due and payable for each Transaction, whether a Transponder Transaction (other than an Interoperable Transponder Transaction) or a Video Transaction, that is recognized by the ETCS and properly transmitted to TxDOT's CSC Host in accordance with the ICD (and any other criteria that may be developed and agreed upon in writing by the Parties pursuant to Section 8(f) or 9(e)) and shall be paid to TxDOT by TxDOT's deduction of the amount thereof from the amount of each toll transaction payment made by TxDOT to Developer pursuant to Section 7 hereof.

(d) Delinquent Payment Deduction.

- (i) A Delinquent Payment Deduction will be made for any Payment Period in which TxDOT fails to make a timely payment to Developer in accordance with Section 7. The Delinquent Payment Deduction shall be payable as a monthly adjustment in accordance with Section 6(h) and shall be reported to Developer in a monthly Delinquent Payment Deduction report to be delivered to Developer by TxDOT pursuant to Section 14(d).

- (ii) The Delinquent Payment Deduction will be determined in accordance with the following formula (and an example of the calculation of the Delinquent Payment Deduction is attached hereto as Attachment 8):

$$\begin{array}{l} \text{Delinquent Payment Deduction} \\ n,m \\ \text{(Year } n = 1 \text{ to } \underline{\quad} \text{ and Month } m \\ = 1 \text{ to } 12) \end{array} = \frac{\sum \text{Daily Delinquent Payment Deduction } n,m \times \text{Duration}}{365 \text{ (or } 366, \text{ in leap years)} \times \text{Interest Rate } n,m}$$

Where:

$$\begin{array}{l} \text{Daily Delinquent Payment} \\ \text{Deduction } n,m \end{array} = \frac{\text{Total payments due Developer on each day during Month } m \text{ of Year } n \text{ that are not timely paid by TxDOT when due under } \underline{\text{Section 7}}}{\underline{\quad}}$$

$$\text{Duration} = \text{The number of calendar days from the date a payment under } \underline{\text{Section 7}} \text{ is due until the date such payment is made to Developer.}$$

$$\text{Interest Rate } n,m = \text{Interest at a rate equal to the LIBOR in effect on the first day of Month } m \text{ in Year } n \text{ plus 400 basis points}$$

(e) Non-Compliance Deduction.

- (i) A Non-Compliance Deduction will be made for any Payment Period in which TxDOT is assessed Non-Compliance Points in respect of such Payment Period. The Non-Compliance Deduction shall be payable as a monthly adjustment in accordance with Section 6(h). The Non-Compliance Deduction will be calculated as follows (and an example of the calculation of the Non-Compliance Deduction is attached hereto as Attachment 9):

$$\begin{array}{l} \text{Non-Compliance} \\ \text{Deduction } n,m \\ \text{(Year } n = 1 \text{ to } \underline{\quad} \text{ and} \\ \text{Month } m = 1 \text{ to } 12) \end{array} = \text{Monthly Non-Compliance Deduction } n,m$$

Where:

$$\text{Monthly Non-Compliance Deduction } n,m = \text{Monthly Non-Compliance Reduction Percent} \times \text{TxDOT Compensation } n,m$$

Monthly Non-Compliance Reduction Percent = The percent reduction to the TxDOT Compensation associated with the Non-Compliance Points for Month *m* as identified in Table 6(e)-1 below

TxDOT Compensation *n,m* = Base Transaction Fees for Period *n,m* + Variable Transaction Fees for Period *n,m*

Table 6(e)-1 – Monthly Non-Compliance Reduction Percent

Non-Compliance Points for Period <i>n,m</i>	Monthly Non-Compliance Reduction Percent for Period <i>n,m</i>
0 to 16	0%
17 to 24	2%
25 to 33	8%
34 to 44	20%
45 or more	35%

- (ii) Subject to Section 6(e)(iii), each month TxDOT will assign Non-Compliance Points to its performance in accordance with the Performance Standards and the terms hereof and will report the same to Developer in the monthly Non-Compliance Deduction report to be delivered to Developer pursuant to Section 14(e) no later than 15 days after the end of such month. Any related Non-Compliance Deduction shall be paid by TxDOT in connection with the monthly adjustments provided for in Section 6(h). Upon the written request of Developer, in addition to such monthly Non-Compliance Deduction report, TxDOT shall furnish to Developer reasonably detailed information and support for TxDOT's determination of such Non-Compliance Points. Non-Compliance Points shall not be assessed under more than one category for any particular event or circumstance that is a breach or failure. Where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Non-Compliance Points, and the highest amount of Non-Compliance Points under the relevant breaches or failures shall apply. Upon the request of either Party, the Independent Engineer may review any determination of Non-Compliance Points by TxDOT hereunder and advise the Parties concerning the accuracy thereof. Developer and the Independent Engineer each shall have the right to inspect and audit TxDOT's books and records concerning the determination of Non-Compliance Points and Non-Compliance Deductions pursuant to Section 15(b) and (c). Any disagreement between the Parties concerning the assignment of Non-Compliance Points shall be resolved pursuant to Section 20.

(iii) No Non-Compliance Points will be assigned to a failure of TxDOT to achieve the performance required in accordance with the Performance Standards and the other standards set forth herein if such failure to perform is (A) directed by Developer, (B) planned by TxDOT and consented to, in advance in writing, by Developer, (C) directly caused by the acts or omissions of Developer or (D) excused pursuant to Section 22(d).

(f) Incidental Charges to Users.

In addition to the TxDOT Compensation, TxDOT shall have the right to impose on and collect from Users (separate from the toll charges referenced in Sections 7(a) and (b)), and retain as additional compensation, Incidental Charges consistent with TxDOT's practices concerning customers of its own facilities; provided that Developer shall have no liability for TxDOT's inability to collect the same from Users.

(g) Additional Fees and Charges Payable By Developer.

In addition to the TxDOT Compensation, Developer shall pay to TxDOT its demonstrated and actual additional administrative and processing costs and expenses, except those capable of being reasonably mitigated, incurred to perform services under this Tolling Services Agreement directly attributable to any failure or inability of Developer to meet the ETCS performance requirements set forth in Section 21.5 of the Technical Provisions. (Developer recognizes and acknowledges that such additional costs and expenses will not be compensated by any Non-Compliance Points liquidated damages that may be assessed and paid to TxDOT under the Agreement by reason of any such failure, because the same were estimated and agreed to only to cover damages to TxDOT in its capacity as a Party to the Agreement and not TxDOT's capacity as a provider of the services set forth in this Tolling Services Agreement.) In addition, Developer shall pay to TxDOT all sums due in accordance with the terms of any Change Orders or Change Directives. Amounts payable to TxDOT pursuant to this Section 6(g) (other than amounts payable under the previous sentence) shall be payable by monthly adjustments pursuant to Section 6(h).

(h) Monthly Adjustments.

For each calendar month during the Term, TxDOT shall deliver to Developer, by the 15<sup>th</sup> day of the immediately succeeding calendar month, a report of adjustments made in respect of Transactions during such month and adjustments owing in respect of other matters processed during such month, in each case as contemplated hereunder and with each such report to be in reasonable detail. The report shall cover each of the following, with the related adjustment to be made as follows:

(i) Such report shall set forth all Transaction adjustments made during such calendar month in respect of (A) Unpostable

Transponder Transactions that have not been reclassified as a Video Transaction, (B) Duplicate Transactions previously paid by TxDOT, (C) Video Transactions not pursuable (e.g., Transactions involving vehicles that are not Candidate Vehicles), (D) adjustments resulting from User disputes and (E) adjustments relating to refunds to accounts or Video Transaction Users due to inaccurate toll charges and inaccurate Transactions transmitted from Developer to TxDOT. Such adjustment shall be made each Business Day during the applicable calendar month as contemplated by Section 7(a) and (b). Such adjustments shall be applied on a daily basis to the toll Transaction payment owing to Developer pursuant to Section 7.

- (ii) Such report also shall set forth all adjustments to be made in respect of the calendar month covered thereby for (A) any amounts owing to TxDOT from Developer pursuant to Section 6(g); (B) Delinquent Payment Deductions and Non-Compliance Deductions owing to Developer from TxDOT; and (C) any other amounts subject to adjustment pursuant to the terms of this Tolling Services Agreement (including, but not limited to, any refunds provided for in Section 11(c)). Such report shall reasonably describe the basis for the amounts owing for each of the foregoing items and the net amount owing in respect thereof shall be payable by the applicable payor Party to the applicable payee Party within 15 days after the due date for delivery of such report. For the avoidance of doubt, however, the delivery of such report shall not be a condition to any adjustment otherwise required for Delinquent Payment Deductions and Non-Compliance Deductions hereunder.

TxDOT Compensation and other amounts payable in accordance with this Section 6(h) not paid when due (other than as a consequence of TxDOT's failure to timely deduct payments owing to it when it has the right hereunder to make such deductions from toll payments to be made to Developer hereunder) shall bear interest and late charges as provided in Section 19(f).

(i) Disputed Amounts.

- (i) In the event either Party disputes any amount that is to be payable by or to such Party pursuant to a monthly adjustment in accordance with Section 6(h), then (A) such Party shall, within 14 days after delivering or receiving (as the case may be) notice or an invoice or statement for such amount, deliver written notice to the other Party of the amount in dispute and the reasons for dispute and (B) the Party from which the disputed amount is payable shall, within the time period for payment of the invoice, deposit into the Toll Operator Dispute Account under the Project Trust Agreement an amount equal to 105% of the amount in dispute and notify the other Party in writing that such deposit has been made.

- (ii) The amount so deposited under clause (i) above shall be maintained in the Toll Operator Dispute Account until the dispute is finally determined, at which time all amounts due the payee Party, if any, shall be immediately released from the Toll Operator Dispute Account to pay the amount due, including any late charge and interest. If the amount in the Toll Operator Dispute Account is insufficient to pay the amount finally determined to be due, including any late charge and interest, the payor Party shall immediately satisfy the balance of the amount due from other sources. If the amount in the Toll Operator Dispute Account exceeds the amount finally determined to be due, if any, the excess shall be immediately released to the payor Party, together with any interest earnings in the Toll Operator Dispute Account attributable to the excess funds so released to the payor Party.
- (j) Any distribution, receipt, or handling of funds by TxDOT under this Section shall be subject to the Custodial Arrangements.

7. Toll Transaction Payments to Developer

- (a) Subject to Sections 7(c) and 7(d), and except as provided otherwise in Section 22(d), for each Transponder Transaction, TxDOT shall, via the Custodial Arrangements, deposit or cause to be deposited with the trustee under the Project Trust Agreement an amount equal to the toll for the Transponder Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a)), less fees payable under Section 6 and adjustments made pursuant to Section 6(h) (other than monthly adjustments provided for in Section 6(h)(ii)), within two Business Days after the date the Transponder Transaction has been properly transmitted to TxDOT's CSC Host in accordance with the ICD. Notwithstanding the foregoing (but subject to Sections 7(c) and 7(d), and except as provided in Section 22(d)), with respect to any Transponder Transaction for which Developer does not receive an acknowledgment of receipt by TxDOT's CSC Host in accordance with the ICD, (i) if Developer has both notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Transponder Transaction data in digital form in accordance with the ICD within four hours after Developer's initial transmittal of such Transponder Transaction to TxDOT's CSC Host in accordance with the ICD, then TxDOT shall be obligated to deposit or cause to be deposited the applicable amount within such two Business Day period from the date and time of the initial transmittal, and (ii) if Developer shall not have both so notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Transponder Transaction data in digital form in accordance with the ICD within such four hour period, then the period within which TxDOT is obligated to deposit or cause to be deposited the applicable amount shall be extended to the corresponding time, less four hours, on the date that is two Business Days from the date and time that Developer shall have both so notified TxDOT of such transmittal and also so made arrangements with TxDOT either for the transmittal or for the

delivery to TxDOT of the applicable Transponder Transaction data in digital form in accordance with the ICD. The applicable amount shall be due and payable regardless of whether TxDOT actually collects the applicable toll amount from the applicable User. For the avoidance of doubt, the toll to be remitted to Developer pursuant to this Section 7(a) does not include any Incidental Charges.

- (b) Subject to Sections 7(c) and (d), and except as provided otherwise in Section 22(d), for each Video Transaction, TxDOT shall, via the Custodial Arrangements, deposit or cause to be deposited with the trustee under the Project Trust Agreement an amount equal to the toll for the Video Transaction (i.e., the toll charge indicated by Developer as contemplated by Section 11(a)), less fees payable under Section 6 and adjustments made pursuant to Section 6(h) (other than monthly adjustments provided for in Section 6(h)(ii)), within two Business Days after the date the Video Transaction has been properly transmitted to TxDOT's CSC Host in accordance with the ICD. Notwithstanding the foregoing (but subject to Sections 7(c) and 7(d), and except as provided in Section 22(d)), with respect to any Video Transaction for which Developer does not receive an acknowledgment of receipt by TxDOT's CSC Host in accordance with the ICD, (i) if Developer has both notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Video Transaction data in digital form in accordance with the ICD within four hours after Developer's initial transmittal of such Video Transaction to TxDOT's CSC Host in accordance with the ICD, then TxDOT shall be obligated to deposit or cause to be deposited the applicable amount within such two Business Day period from the date and time of the initial transmittal, and (ii) if Developer shall not have both so notified TxDOT of such attempted transmittal and also made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Video Transaction data in digital form in accordance with the ICD within such four hour period, then the period within which TxDOT is obligated to deposit or cause to be deposited the applicable amount shall be extended to the corresponding time, less four hours, on the date that is two Business Days from the date and time that Developer shall have both so notified TxDOT of such transmittal and also so made arrangements with TxDOT either for the transmittal or for the delivery to TxDOT of the applicable Video Transaction data in digital form in accordance with the ICD. The applicable amount shall be due and payable regardless of whether TxDOT actually collects the applicable toll amount from the applicable User. For the avoidance of doubt, the toll to be remitted to Developer pursuant to this Section 7(b) does not include any Incidental Charges.
- (c) If Developer transmits to TxDOT's CSC Host on any given day more than two full days of Transactions, TxDOT shall be entitled to reasonable extensions of the deadlines for payment set forth in Sections 7(a) and (b) to the extent that TxDOT bears the burden of providing evidence reasonably satisfactory to Developer that despite diligent efforts to process the Transactions TxDOT was unable to complete processing

within the deadlines provided due to the added volume of Transactions transmitted during the day.

- (d) If (i) for any reason other than a delay attributable to TxDOT (including any delay resulting from TxDOT's failure to include in the applicable report referenced in Section 14(a) information concerning the reclassification of any Transponder Transaction) Developer first transmits to TxDOT's CSC Host sets of Transaction data more than 30 days after the date the Transactions occurred (or in the case of any Transaction that has been reclassified, more than 30 days after the date on which Developer has been notified of the reclassification), and (ii) TxDOT bears the burden of providing evidence reasonably satisfactory to Developer that TxDOT's rate of collection of the toll charges associated with such set of Transaction data (despite its commercially reasonable efforts to collect) is lower than the rate of collection it would have realized had transmission occurred without such delay, using the same billing, collection and enforcement practices and procedures, then TxDOT shall have the right to recover from Developer TxDOT's loss of toll charge collections so proven.
- (e) The Parties acknowledge that the requirement to make payments to the trustee under the Project Trust Agreement in accordance with the terms hereof is for the benefit and protection of TxDOT, Developer and Developer's Lenders, and is necessary for Developer to comply with the Agreement and the Project Trust Agreement. Accordingly, TxDOT shall have no right or obligation to make any payments directly to Developer, or to any Person other than such trustee.
- (f) TxDOT's payments shall be subject to the Custodial Arrangements. TxDOT and Developer acknowledge that the Custodial Arrangements are for the protection of Developer, and Developer is an intended third party beneficiary of the Custodial Arrangements, so long as this Tolling Services Agreement is in effect.

## 8. Video Transactions

- (a) Developer's obligations regarding transmission of video imagery data to TxDOT's CSC Host are as follows:
  - (i) For Transponder Transactions where the status of the transponder indicated in the Consolidated Master List at the time of the Transaction is other than "Good", Developer shall transmit to TxDOT the Transponder Transaction, video images of license plates and video data as required by the ICD;
  - (ii) For all other Transponder Transactions where the status of the transponder indicated in the Consolidated Master List at the time of the Transaction is "Good" and the User Classification determined by Developer does not match the User Classification associated with the transponder as indicated in the Consolidated Master List at the time of the Transaction, Developer shall

transmit to TxDOT the Transponder Transaction, video images of license plates and video data as required by the ICD;

- (iii) For all Video Transactions where a transponder is recorded but not listed in the Consolidated Master List, Developer shall transmit to TxDOT the video images of license plates and video data as required by the ICD, as well as the transponder information;
  - (iv) For all Video Transactions, in the event a license plate in a Video Transaction is on the Consolidated Master List, the Video Transaction shall be denoted as such in accordance with the ICD, shall state the license plate's alpha-numeric or personalized information, and shall include video images of the license plates and video data as required by the ICD; and
  - (v) For all other Video Transactions, Developer shall transmit to TxDOT the video images of license plates and video data as required by the ICD.
- (b) For all Video Transactions where license plates match a current customer account record, TxDOT shall make an attempt to post the Transaction to the customer account and reclassify the Video Transaction to a Transponder Transaction.
  - (c) TxDOT shall issue a statement to each Video Transaction User (for whom TxDOT has necessary registration and mailing address information) and shall provide each such Video Transaction User the opportunity to pay such invoice, in each case consistent with TxDOT's practices regarding customers of its own facilities, prior to treating such Video Transaction as a violation or initiating violation processing and procedures against such Video Transaction User. If a Video Transaction User shall fail to pay any such statement within the applicable allotted time period, then TxDOT may initiate violation processing and procedures against such Video Transaction User, consistent with TxDOT's policies regarding customers of its own facilities.
  - (d) For the purpose of Section 8(c), "issue" means the billing statement accurately sets forth the toll charges, including the Incidental Charges, and is deposited in the U.S. mail, proper postage prepaid.
  - (e) The reports provided for in Section 14(a) will include information referencing each Transponder Transaction that has been reclassified to a Video Transaction within one Business Day following such reclassification (and with any such reclassification to be made within 31 days after TxDOT's receipt of the applicable Transponder Transaction or such other time period as applies from time to time under the applicable interoperability agreement).
  - (f) Following the execution of this Tolling Services Agreement and before the Cutover Date, Developer and TxDOT shall cooperate with each other to

discuss whether there should be implemented any objective criteria, in addition to the requirements of the ICD, for the rejection of Video Transactions that may require further review by Developer before acceptance and processing by TxDOT. Neither party shall be obligated to accept such additional requirements.

- (g) Notwithstanding anything to the contrary set forth in this Tolling Services Agreement, any reference in this Tolling Services Agreement to the delivery of video data or images of license plates shall be deemed to be a reference to an image of either the front or the back license plate as provided in clause (b) of the definition of "Candidate Vehicle" (except that, as provided in such clause (b), the image must be of the front license plate in the case of a vehicle with a trailer).

## 9. Transponder Transactions

- (a) Before Developer transmits a Transaction to TxDOT's CSC Host, Developer shall compare the transponder to the most recently updated version of the Consolidated Master List. If the transponder is listed as "Good" in the Consolidated Master List, Developer shall transmit the Transponder Transaction (for this purpose, determined to be a Transponder Transaction without reference to the sufficiency of funds in the applicable customer account) as required by the ICD, but if such Transponder Transaction is determined to be an Unpostable Transponder Transaction, then TxDOT shall, for TxDOT accounts, request from Developer video images and video data (as required by the ICD and as contemplated herein) within seven days of TxDOT's receipt of the applicable Transponder Transaction (but without prejudice to the right of Developer to submit such video images (as required by the ICD and as contemplated herein) at any time following the date on which the reclassification of the applicable Transponder Transaction to an Unpostable Transponder Transaction is included in a report provided for in Section 14(a), as provided in Section 8(e)). If Developer elects not to send such video images and video data within seven days following TxDOT's request, and the Transaction is not postable, the Transaction will be adjusted as one not involving a Candidate Vehicle until such time as Developer resubmits the Transaction with the video images and video data.
- (b) If a Transponder Issuer (including TxDOT) rejects due to insufficient funds TxDOT's settlement of a Transaction on the Project by the Transponder Issuer's customer that was originally characterized as a Transponder Transaction (prior to such determination of insufficient funds), TxDOT will resubmit the Transaction for settlement consistent with TxDOT's practices regarding customers of its own facilities prior to mailing a Video Transaction billing statement to the customer on account of the rejected Transaction. TxDOT shall advise Developer and request a video image and video data, within seven days of TxDOT's receipt of the applicable Transponder Transaction, with respect to any such Transaction that is not settled by the Transponder Issuer within that time frame. For the avoidance of doubt, a Transaction that was originally

characterized as a Transponder Transaction is automatically reclassified as a Video Transaction if both (i) the video image is available, and (ii) the account persists to have insufficient funds to pay the full toll for the Transaction through the Business Day prior to the Business Day on which TxDOT would mail a Video Transaction billing statement in accordance with TxDOT's practices regarding customers of its own facilities. If the video image is unavailable and the account so persists to have insufficient funds, however, then the Transaction will be adjusted as one not involving a Candidate Vehicle unless and until such time as Developer resubmits the Transaction with video images and video data.

- (c) If a vehicle is associated with a transponder issued by TxDOT or by another Toll Operator or Transponder Issuer and associated with an account that is not closed at the time of transmission, but it is evident that a Transponder Transaction is not recorded because the transponder is not properly mounted or not properly functioning, TxDOT shall use reasonable efforts, in accordance with TxDOT's practices regarding customers of its own facilities, to notify the account holder and rectify or cause to be rectified the problem with the transponder.
- (d) The Base Transaction Fees and Variable Transaction Fees are inclusive of any transaction fees and charges by other Toll Operators and Transponder Issuers, including NTTA, in connection with account management and fund transfers for Transponder Transactions on the Project by their account holders (other than any interoperability fees required to be paid by Developer hereunder) and Developer shall not be responsible for any such additional charges or fees.
- (e) Following the execution of this Tolling Services Agreement and before the Cutover Date, Developer and TxDOT shall cooperate with each other to discuss whether there should be implemented any objective criteria, in addition to the requirements of the ICD, for the rejection of Transponder Transactions that may require further review by Developer before acceptance and processing by TxDOT. Neither party shall be obligated to accept such additional requirements.

10. No Duty to Enforce, Collect or Pay

- (a) Developer shall be responsible for determining whether a vehicle is a Candidate Vehicle. TxDOT shall have no duty to attempt to collect or enforce a toll, or to pay Developer for Transactions, respecting a vehicle traveling on the Project where the vehicle is not a Candidate Vehicle; provided, however, that if TxDOT does collect a toll respecting any such vehicle, it shall pay Developer the toll collected and shall be entitled to TxDOT Compensation for such Transaction. Whether TxDOT has received an unobstructed readable video image (as defined in the definition of Candidate Vehicle) shall be determined in accordance with Good Industry Practice. TxDOT shall provide Developer access to TxDOT's standard exception reports indicating Transactions that involve vehicles that are not Candidate Vehicles. If TxDOT shall pay Developer a toll for any such Transaction, it shall be entitled to reimbursement or

adjustment in respect thereof pursuant to Sections 6(g) and (h), and TxDOT shall have no obligation to pursue collection or enforcement of such Transaction.

- (b) TxDOT shall have no duty to accept for processing transmissions of Transaction data not in the format and having the content required by the Interface Control Document (or by any other criteria that may be developed and agreed upon in writing by the Parties pursuant to Section 8(f) or 9(e)). If TxDOT accepts such data for processing, then the matter shall be treated as a Transaction for all purposes under this Tolling Services Agreement, except as provided otherwise in Section 10(a). If TxDOT does not accept such data, (i) TxDOT shall reject the data in accordance with the ICD, and (ii) TxDOT shall not be entitled to process the matter for collection or enforcement unless and until it subsequently accepts transmission of the data.

11. Overcharges; Credits to Account Holders

- (a) TxDOT shall charge the toll charge indicated by Developer. Developer shall be responsible for determining the applicable toll charge that corresponds to each Transaction based upon User Classification, Developer's applicable toll schedule or dynamic pricing model, and any applicable high occupancy vehicle discount and correctly communicating such information to TxDOT. For the avoidance of doubt, if Developer states a toll charge for a Transponder Transaction or a Video Transaction different from the toll charge for the User Classification associated with the applicable customer account, TxDOT shall charge the toll charge as indicated by Developer. The foregoing does not waive any of Developer's obligations or any of TxDOT's rights and remedies under the Agreement regarding toll rates that may be charged to Users.
- (b) Under no circumstances shall TxDOT charge any User a toll in addition to or higher than the toll charge transmitted from Developer to TxDOT, except that TxDOT may charge for the Incidental Charges authorized hereunder. TxDOT shall refund to any User any toll or Incidental Charge TxDOT charges in violation of this provision.
- (c) If TxDOT is or becomes aware that any account or Video Transaction User has been overcharged or incorrectly charged for use of the Project by reason of inaccurate toll charges transmitted from Developer to TxDOT, including but not limited to by reason of incorrect transmission by Developer of dynamic pricing information or failure to properly account for an applicable high occupancy vehicle discount, TxDOT shall have the right and the obligation to arrange for a refund to the subject account or Video Transaction User as part of the monthly adjustment provided for in Section 6(h); provided, however, that TxDOT shall always be obligated to promptly arrange for such refund if it has received payment of such overcharge from Developer or the trustee under the Project Trust Agreement, as the case may be, pursuant to the immediately following sentence. Alternately, TxDOT shall have the right to invoice Developer or the trustee under the Project Trust Agreement, in writing or electronically,

for the overcharge or incorrect charge, and Developer shall pay, or cause the trustee under the Project Trust Agreement to pay from the Toll Revenue Account, such invoiced amount within two Business Days after receipt of the invoice, and following receipt of such invoiced amount, TxDOT shall promptly refund such amount to the relevant account or Video Transaction User. Notwithstanding the foregoing, however, in connection with each refund or reimbursement, TxDOT shall have no obligation to recalculate or adjust its Transaction fees in accordance with Section 6 (i.e. based on the correct toll charges). The determination of whether there has been an overcharge or incorrect charge in connection with a customer dispute shall be made pursuant to the Agreement and, to the extent consistent with the Agreement, written guidelines furnished by Developer, or if Developer does not furnish such guidelines, in accordance with TxDOT's practices and procedures utilized with respect to its own facilities. This Section 11(c) shall be subject to the Custodial Arrangements to the extent TxDOT receives, disburses, and/or handles any funds hereunder.

12. System Technology Interface; Interoperability

- (a) Developer at its expense shall design, install, operate and maintain the ETCS and interconnections of the ETCS with TxDOT's CSC Host. Such design and installation shall be consistent with, and meet all requirements of, the Interface Control Document attached hereto as Attachment 3, as the same may be revised or updated by TxDOT from time to time. TxDOT shall reasonably cooperate with Developer in fulfilling its obligations under this Section 12(a).
- (b) TxDOT at its expense shall supply, operate and maintain TxDOT's CSC Host and facilitate interconnection of the ETCS to TxDOT's CSC Host. TxDOT's CSC Host shall be consistent with, and meet all requirements of, the Interface Control Document attached hereto as Attachment 3, as the same may be revised or updated by TxDOT from time to time.
- (c) TxDOT shall diligently cooperate and coordinate with Developer in its efforts to conduct and satisfy all demonstration and performance testing of interconnection and interoperability of the ETCS with the TxDOT's CSC Host, in accordance with Developer's testing and commissioning plans. Without limiting the foregoing, TxDOT shall cooperate with Developer in preparing and adhering to a reasonable schedule, consistent with Section 3(b), for interconnecting the ETCS with TxDOT's CSC Host and for conducting such testing. In addition, TxDOT shall conduct testing prior to the Cutover Date, pursuant to a plan and schedule consistent with Section 3(b), to demonstrate to Developer the capability of TxDOT's information technology and management systems and personnel to effectively receive, track, process and report Transaction data for both Transponder Transactions and Video Transactions. Unless otherwise agreed in writing by TxDOT and Developer, TxDOT and Developer shall conduct demonstration and performance testing of interconnection and interoperability of the ETCS with TxDOT's CSC Host at least 90 days before the Cutover Date, with a view to the Parties' identification and

correction of any problems no later than 60 days before the Cutover Date. The Independent Engineer shall participate with, and assist and advise, the Parties in connection with the development of the interconnection schedule and the demonstration and performance testing of interconnection and interoperability of the ETCS with TxDOT's CSC Host as contemplated by this Section 12(c), including advising the Parties concerning the resolution of disagreements or problems related to such interconnection and interoperability and certification of operational readiness of the toll system. The Independent Engineer shall provide the same services in connection with the resumption or recovery of tolling services following any major interruption thereof at any time during the Term.

- (d) TxDOT will consolidate the Transponder Issuers' master lists and updates (such consolidation being the "Consolidated Master List") of all known transponders and their current known status and electronically distribute the consolidated information to Developer. Status designations shall be in accordance with the Interface Control Document. TxDOT will make such electronic distribution of the Consolidated Master List to Developer daily.
- (e) Developer shall be responsible for transmitting toll rates for each Transaction corresponding to Developer's dynamic pricing model and for identifying all Transactions that qualify for a high occupancy vehicle discount.
- (f) So long as this Tolling Services Agreement is in effect, Developer shall deploy toll system technology for the Project that does not adversely affect reliability of, or ability to meet applicable standards in the most recently issued Interface Control Document for, transmission of data to TxDOT's CSC Host. If TxDOT modifies the requirements of TxDOT's systems, Developer is not required to maintain interoperability with such modification pursuant to Sections 8.7.2 and 8.7.3 of the Agreement, and such modifications are not attributable to a change required by this Tolling Services Agreement or by a Change Order or Change Directive under this Tolling Services Agreement benefiting the Project, then TxDOT shall reimburse Developer for Developer's reasonable costs of any modifications Developer is required to make to comply with such modified requirements.
- (g) TxDOT acknowledges and agrees that Developer may create and apply its own business rules for assisting in the proper determination of Transactions by Users and tolls due from Users, so long as the business rules are consistent with the Agreement, Technical Provisions, Project Management Plan, this Tolling Services Agreement and Good Industry Practice. Developer may implement such business rules through logical routines incorporated into its tolling system. Subject to Section 11(c), TxDOT shall accept and process data developed from application of such business rules and transmitted to TxDOT's CSC Host. For the avoidance of doubt, unless otherwise agreed in writing by TxDOT and Developer, tolling on the Project shall be conducted on a transaction, rather than a

trip, basis, and will involve a single Transaction point toll collection process.

- (h) So long as this Tolling Services Agreement is in effect, TxDOT shall adopt and issue new types or models of transponders in accordance with applicable Texas statewide interoperability requirements. TxDOT and Developer acknowledge that the benchmark performance standards for transponders under interoperability requirements in effect as of the date of execution hereof limit the types and models of transponders to those that are equal to or better than the performance levels of the transponders listed in Attachment 4 to this Tolling Services Agreement.

13. Intellectual Property and Licensing; Promotional Plan

- (a) If Developer utilizes any tolling system architecture, design, process, method or invention that is protected by Intellectual Property Rights of another Person, then before requiring TxDOT to provide any services under this Tolling Services Agreement that utilize any such protected item, Developer shall obtain and provide to TxDOT, without cost to TxDOT, any licenses that are required in order for TxDOT to accept data and transactions derived from the matter so protected and to otherwise perform services using such protected items. Developer shall indemnify, protect, defend and hold harmless TxDOT from any loss, cost, liability, obligation or expense arising out of any infringement by TxDOT of any such Intellectual Property Rights in the performance of this Tolling Services Agreement (except to the extent that any such loss, cost, liability, obligation or expense relates to a modification to such Intellectual Property Rights made by TxDOT without authorization by Developer).
- (b) If Developer by Change Order or Change Directive requires TxDOT to modify any portion of TxDOT's VTX System or other applicable comparable system, Developer shall have no right, title, or interest in or to any such modification.
- (c) TxDOT hereby grants to Developer a fully paid up, non-exclusive, license to use TxDOT's name, logos, trademarks and brands during the term of this Tolling Services Agreement in connection with the Project and Developer's operation thereof, including maintenance of TxDOT's name, logos, trademarks and brands on the roadway, on the Project web site and in Developer's promotional and marketing materials for the Project; provided that the location, context and appearance of all displays of TxDOT's name, logos, trademarks and brands shall be subject to TxDOT's prior review and prior written approval. TxDOT shall not unreasonably withhold its approval; and TxDOT shall be deemed to approve unless it delivers to Developer written objection or disapproval, including the reasons therefor and any changes needed to obtain approval, within 14 days after TxDOT receives written request for approval including the proposed usage. The license granted hereby shall automatically expire upon expiration or earlier termination of this Tolling Services Agreement, unless TxDOT otherwise agrees in writing.

- (d) Nothing in this Section 13 grants to TxDOT any exclusive rights regarding use or display of names, logos, trademarks or brands of Transponder Issuers, or regarding marketing and promotion by Transponder Issuers, in connection with the Project. TxDOT reserves the right to challenge other Transponder Issuers that use logos, trademarks or brands that infringe upon TxDOT's rights in its own logos, trademarks or brands.
- (e) Subject to Section 13(b), any systems that may be developed on Developer's behalf that do not incorporate any technology owned or licensed by TxDOT and that are paid for by Developer shall be Developer's intellectual property, but Developer shall grant TxDOT a paid-up, non-exclusive license to use the same during the Term to the extent such systems are required for TxDOT's performance of its responsibilities under this Tolling Services Agreement.

14. Reports; Developer Protection of Patron Confidential Information

- (a) TxDOT shall provide access to reports Developer may utilize to prepare reconciliation reports, in summary or in detail, by reporting period selected by Developer. Such reports to which access is provided by TxDOT shall reflect the Transactions as transmitted from Developer to TxDOT for the applicable reporting period and shall be adequate for purposes of Developer's reconciliation of Transaction fees and other amounts paid by Developer to TxDOT and TxDOT to Developer. Such reports shall be broken down to support the reconciliation of the fees paid to TxDOT and the tolls paid to Developer. Such reports shall reflect the Transactions received by TxDOT, the breakdown of Transponder Transactions, Interoperable Transactions, Transponder Transactions posted to customer accounts, Transponder Transactions and Interoperable Transactions reclassified as Unpostable Transponder Transactions or Video Transactions, Transponder Transaction variances that are unpursuable, Video Transactions, Transactions that cannot be pursued as a result of not involving a Candidate Vehicle and Transaction adjustments. TxDOT shall post Transactions from the Project in accordance with TxDOT's standards and practices for its own facilities, and Developer shall have access to reports reflecting such Transactions upon such posting. Upon the request of either Party, the Independent Engineer may review reconciliation reports and underlying Transaction data and assist and advise the Parties in connection with any disagreement with respect thereto, including any disagreement with respect to verifying reconciliations.
- (b) Without prejudice to or limitation on the right of Developer to initially determine (as provided in Section 10(a)) or dispute whether a vehicle is a "Candidate Vehicle" as defined in this Tolling Services Agreement, TxDOT shall provide Developer with a summary and detail to support the reported vehicles that have been deemed "Not a Candidate Vehicle".
- (c) TxDOT shall reconcile Transactions for each calendar month not later than 15 days after the end of such month. TxDOT shall make reconciled

reports available to Developer through direct access to TxDOT's reporting system, as in (a) above or through other electronic means.

- (d) TxDOT shall provide Developer with a monthly Delinquent Payment Deduction report for each calendar month not later than 15 days after the end of such month. Such report shall state (i) for each instance in the applicable calendar month in which a payment due under Section 7 was not timely made, the amount of the delinquent payment, the number of calendar days or partial calendar days from the date the payment was due under Section 7 until the date the payment was made to Developer (or until the end of the calendar month if not yet paid) and (ii) TxDOT's calculation of the Delinquent Payment Deduction, if any, for that calendar month.
- (e) TxDOT shall provide Developer with a monthly Non-Compliance Deduction report for each calendar month not later than 15 days after the end of such month. Such report shall state (i) a comparison of actual performance during such calendar month to each of the Performance Standards, (ii) TxDOT's calculation of the Non-Compliance Points, if any, for such calendar month and (iii) TxDOT's calculation of the Non-Compliance Deduction, if any, for that calendar month.
- (f) TxDOT also will prepare and provide to Developer any other specific report that is required to be delivered by Developer under the Agreement in respect of the tolling services operation of the Project (provided that such report relates to the general scope of the services provided by TxDOT hereunder).
- (g) TxDOT shall make available its reports to Developer in a format reasonably approved in writing by Developer. In no event shall Developer have the right to require report formatting that TxDOT's system is not capable of generating. Not later than 90 days after the execution of this Tolling Services Agreement, TxDOT shall deliver to Developer sample report formats including fictitious data sets. Developer shall deliver its comments on such sample report formats to TxDOT within not more than 60 days after receipt.
- (h) TxDOT also shall deliver to Developer such other information as Developer may reasonably request to evaluate TxDOT's compliance with this Tolling Services Agreement.
- (i) Developer shall make available to TxDOT, no later than the 15th day of each calendar month, a record of Exempt Vehicle, non-billable transactions for the preceding calendar month.
- (j) Developer also shall deliver to TxDOT such information as TxDOT may reasonably request to evaluate Developer's compliance with this Tolling Services Agreement, including but not limited to such information as TxDOT may reasonably request from time to time concerning the compliance of the in-lane ETCS equipment utilized for the Project with the

requirements of the Agreement. TxDOT shall maintain the confidentiality of such information.

- (k) Developer shall maintain any and all information relating to TxDOT account holders that may be reported under this Section 14 as confidential information and in compliance with Section 8.8 of the Agreement, which is hereby incorporated herein by reference, and with applicable Laws on notice of privacy practices.

15. Records and Audit Rights

- (a) TxDOT shall maintain, in accordance with Good Industry Practice, accurate and complete books and records, including electronic data, of or relating to (i) all Transponder Transactions and Video Transactions received via TxDOT's CSC Host, (ii) all actions and dispositions by TxDOT with respect to each Transponder Transaction and Video Transaction received via TxDOT's CSC Host, (iii) all data, information and calculations relevant to TxDOT Compensation and other fees and charges that TxDOT charges to Developer, itemized by each Transponder Transaction and Video Transaction, and itemized by type, date and amount, (iv) all User violations by User, date and amount, (v) all Incidental Charges directly relating to Project usage, itemized by User, type, date and amount, (vi) TxDOT's performance of this Tolling Services Agreement, including books and records relating to compliance or lack of compliance with Performance Standards (including information concerning assignment of Non-Compliance Points) and other obligations of TxDOT under this Tolling Services Agreement, and (vii) all correspondence and other written or electronic communications with Developer relating to this Tolling Services Agreement. TxDOT shall notify Developer where such records and documents are kept.
- (b) TxDOT shall make all its books and records described in Section 15(a) available for audit and inspection by Developer and the Independent Engineer and/or their respective Authorized Representatives or designees, at the location where such books and records are customarily maintained, at all times during normal business hours, without charge. TxDOT shall provide to Developer and the Independent Engineer and their designees copies thereof upon request and at no expense to TxDOT. Developer and/or the Independent Engineer may conduct any such inspection upon two Business Days' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud by TxDOT in connection with performance of this Tolling Services Agreement. The right of inspection includes the right to make extracts and take notes, which will be subject to the confidentiality provisions of this Tolling Services Agreement. Without limiting the foregoing, TxDOT shall afford Developer and its Authorized Representative and the Independent Engineer, and their designees, access during normal business hours to TxDOT's customer service center and other TxDOT offices and operations buildings for the purpose of carrying out their oversight and audit functions.

- (c) The rights of Developer and the Independent Engineer to audit and inspect under this Tolling Services Agreement shall include the right to monitor, audit and investigate TxDOT's books and records related to its services hereunder and to monitor and review TxDOT's systems, practices and procedures concerning Patron Confidential Information obtained and held in connection with this Tolling Services Agreement. Without limiting the foregoing, Developer and the Independent Engineer may exercise such audit and inspection rights to determine the accuracy of the reports provided by TxDOT pursuant to Section 14(d) and (e) and any Delinquent Payment Deduction, Non-Compliance Deduction or Non-Compliance Points stated therein or made or calculated pursuant thereto.
- (d) TxDOT shall retain the books and records described in Section 15(a) for a minimum of five years after the date the record or document is generated. Notwithstanding the foregoing, (i) all records which relate to claims and disputes between TxDOT and Developer shall be retained and made available until any later date that such claims or disputes and actions are finally resolved, and (ii) the time period for retention of Patron Confidential Information shall be as set forth in Section 8.8 of the Agreement.

16. [RESERVED]

17. Change Orders and Change Directives

(a) General

- (i) Developer and TxDOT may (but shall not be obligated to) agree on Change Orders at any time and without limitation as to the subject matter thereof.
- (ii) The following may be adjusted by Change Orders or Change Directives: provisions for additional or supplemental services from TxDOT that (A) are generally within the scope of the back office services set forth in this Tolling Services Agreement, (B) are consistent with applicable Law and (C) do not adversely affect TxDOT's ability to maintain its performance in accordance with the Performance Standards, including additional or supplemental services to assist Developer in implementing its ideas, programs and packages for marketing, promotion and enhanced customer service. For the avoidance of doubt, the changes in scope of work set forth in Section 4(l) may be made only by mutually agreed Change Order.
- (iii) The following may be adjusted by Change Order or Change Directive: terms and provisions of this Tolling Services Agreement (A) as necessary for Developer to implement Change Orders and Directive Letters under the Agreement that relate to or affect the pre-existing terms of this Tolling Services Agreement, including changes in User Classification, provided the adjustment is consistent with applicable Law; and (B) as necessary to comply with applicable Law.

- (iv) Where the provisions above expressly permit Developer to issue a Change Directive, Developer may issue it whenever the Parties are unable to agree as to the adjustment to any portion of the compensation for TxDOT or to Performance Standards after having attempted in good faith for a period not exceeding ten Business Days to agree on such matters (which period may be extended, however, for an additional ten Business Days if either Party elects to have the proposed Change Directive evaluated by the Independent Engineer pursuant to Section 17(f)). All Change Directives shall provide a written detailed description of the changes, and the proposed basis for adjustments in compensation and Performance Standards (if any). TxDOT shall proceed immediately with the Change Directive, and the Parties shall then negotiate a Change Order expeditiously and in good faith. If the Parties are unable to reach agreement upon the Change Order, TxDOT may assert a claim or cause of action to resolve such dispute under Section 20.
- (v) Except as expressly provided above or otherwise mutually agreed in writing by the Parties, no provisions of this Tolling Services Agreement may be modified or amended by Change Order or Change Directive.

(b) Effectiveness of Change Orders.

Change Orders shall only be effective upon execution in writing by both Parties. The foregoing shall not preclude Developer or TxDOT from granting written waivers, in general or in specific instances, of provisions of this Tolling Services Agreement or related Performance Standards.

(c) Developer-Initiated Change Orders.

- (i) Developer Change Order Notice. If Developer wishes to make a change pursuant to Section 17(a) or to evaluate whether to make any such change, other than due to a Change Directive, Developer shall deliver to TxDOT a written notice of the proposed change.
- (ii) Evaluation of Proposed Change Order. Within 30 days after receipt of such notice, or longer or shorter period as the Parties may mutually agree depending upon the complexity of the proposed change, TxDOT shall deliver to Developer a written evaluation of the proposed change, together with TxDOT's analysis and supporting documentation supporting estimated adjustments to any applicable element of compensation or any applicable Performance Standard required as a result of such proposed change.
- (iii) Developer Determination. Within 30 days after receipt of TxDOT's evaluation, Developer shall provide written notice of Developer's intent to proceed or not to proceed with the change. If Developer

elects to proceed with the change and accepts TxDOT's evaluation, Developer shall prepare a Change Order for execution. If Developer elects to proceed with the Change Order but does not accept the evaluation in total, Developer shall negotiate a mutually acceptable Change Order with TxDOT or issue a Change Directive where permitted under Section 17(a).

(d) Change Order Pricing.

- (i) Modifications or adjustments of TxDOT's compensation under this Tolling Services Agreement as a consequence of a Change Order or Change Directive shall be based upon the increase or decrease in (A) where applicable, TxDOT's marginal costs directly attributable to the change and a reasonable rate of return commensurate with the risks undertaken by TxDOT under the terms of this Tolling Services Agreement respecting the affected services and under the method of pricing such services, and (B) where marginal costs are not applicable because the change requires additional or supplemental services beyond those TxDOT is already providing generally for itself, its road system, its customers, Developer and other developers, or because the change reduces services originally priced other than on a marginal cost basis, then TxDOT's reasonable costs directly attributable to the change and a reasonable rate of return commensurate with the foregoing risks.
- (ii) Modifications or adjustments (whether an increase or decrease) of TxDOT's compensation shall be determined in the order of preference set forth below:
  - (A) Adjustments to rates using the pricing structure and methodology set forth in Section 6;
  - (B) If there is no agreement to rate adjustments or the Parties mutually agree that the adjustment is best done with unit prices, then an adjustment shall be negotiated using the unit prices agreed upon;
  - (C) If there is no agreement to unit pricing or the Parties mutually agree that the adjustment is best done with lump sum pricing, then an adjustment shall be negotiated using a lump sum; or
  - (D) If the Parties cannot reach agreement using the above methods and Developer has the right to, and does, issue a Change Directive to perform the changed services, TxDOT shall promptly proceed with the changed services, and the adjustment shall be determined on a time and materials basis applying marginal costs or cost savings, or the actual, reasonable direct costs or savings, as applicable, for the services attributed to the Change Directive, plus or

minus an amount reflecting a reasonable rate of return commensurate with the risks described in Section 17(d)(i). In such case, (I) payments shall be due monthly within 30 days after TxDOT delivers to Developer written invoices and back-up documentation reasonably required by Developer, and (II) TxDOT shall keep and present, in such form as Developer may reasonably require, an itemized accounting together with appropriate supporting data, which shall be subject to audit by Developer in accordance with the provisions of Section 15.

(e) Impact to Performance Standards and Measures.

- (i) If as a result of a Change Order or Change Directive, it is determined that such change will or does materially impair TxDOT's ability to meet the Performance Standards, then Developer and TxDOT will negotiate as part of the Change Order (or, in the case of a Change Directive, TxDOT shall be entitled to) an appropriate adjustment to the affected Performance Standards. The adjustment shall be limited to the minimum extent reasonably necessary under the circumstances.
- (ii) If it is possible to avoid an adjustment to Performance Standards through a Change Order adjusting price (or through a price adjustment in connection with a Change Directive) but Developer prefers not to incur the price adjustment, then TxDOT shall cooperate with and assist Developer with analyzing trade-offs between price and Performance Standards to give Developer a range of choices on how to proceed with the Change Order or Change Directive.
- (iii) If it is not possible to adjust a Performance Standard in a manner that enables Developer to remain in compliance with its obligations under the Agreement, then Developer either may (A) incur the price adjustment to the extent needed to preserve the Performance Standard and remain in compliance with the Agreement or (B) modify or withdraw the Change Order or Change Directive.

(f) Involvement of Independent Engineer

Upon the request of either Party, the Independent Engineer shall evaluate any Change Order contemplated or proposed by either Party or any Change Directive contemplated or proposed by Developer and simultaneously report to the Parties concerning the advisability thereof and the anticipated effect (economic and otherwise) of the same on this Tolling Services Agreement, the services provided hereunder and the operation of the Project. If so requested by either Party, the Independent Engineer also shall participate in, and facilitate, discussions between the Parties concerning any Change Order contemplated or proposed by

either Party or any Change Directive contemplated or proposed by Developer.

(g) Open Book Basis

All negotiations of Change Orders shall be conducted on an Open Book Basis. Except as required to be disclosed by judicial order or applicable Law, both Parties shall maintain the confidentiality of confidential records obtained or reviewed on an Open Book Basis in connection with such negotiations.

18. Representations and Warranties; Covenant Regarding Developer Existence and Good Standing

(a) TxDOT represents and warrants to Developer that, as of the Effective Date:

- (i) TxDOT is duly organized and validly existing under the laws of the state of Texas and has full power, right and authority to execute, deliver and perform this Tolling Services Agreement and each and all of the obligations of TxDOT provided for herein.
- (ii) TxDOT is a governmental entity and as such has no issued or outstanding capital stock (including options, warrants and other rights to acquire capital stock).
- (iii) The execution, delivery and performance of this Tolling Services Agreement have been duly authorized by all necessary action of TxDOT; each person executing this Tolling Services Agreement on behalf of TxDOT has been duly authorized to execute and deliver it on behalf of TxDOT; and this Tolling Services Agreement has been duly executed and delivered by TxDOT.
- (iv) Subject to Section 16.5.3 of the Agreement, neither the execution and delivery by TxDOT of this Tolling Services Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments or governing statutes of TxDOT or any approvals or laws applicable to TxDOT.
- (v) Subject to Section 16.5.3 of the Agreement, this Tolling Services Agreement constitutes the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.
- (vi) There is no action, suit, proceeding, investigation or litigation pending and served on TxDOT which challenges TxDOT's authority to execute, deliver or perform, or the validity or enforceability of, this Tolling Services Agreement or which

challenges the authority of the TxDOT official executing this Tolling Services Agreement; and TxDOT has disclosed to Developer any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TxDOT is aware.

- (vii) TxDOT is not in breach of any applicable Law that would have a material adverse effect on TxDOT's ability to perform its obligations under this Tolling Services Agreement.
  - (viii) TxDOT has all necessary expertise, qualifications, experience, competence, skills and know-how to perform its obligations under this Tolling Services Agreement.
- (b) Developer represents and warrants to TxDOT that, as of the Effective Date:
- (i) Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Tolling Services Agreement and to perform each and all of the obligations of Developer provided for herein. Developer is duly qualified to do business, and is in good standing, in the State of Texas.
  - (ii) The execution, delivery and performance of this Tolling Services Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) of Developer; each person executing this Tolling Services Agreement on behalf of Developer has been duly authorized to execute and deliver it on behalf of Developer; and this Tolling Services Agreement has been duly executed and delivered by Developer.
  - (iii) Neither the execution and delivery by Developer of this Tolling Services Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Developer or any approvals or laws applicable to Developer.
  - (iv) This Tolling Services Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity.
  - (v) There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or

enforceability of, this Tolling Services Agreement or which challenges the authority of the Developer official executing this Tolling Services Agreement; and Developer has disclosed to TxDOT any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

- (vi) Developer is not in breach of any applicable law that would have a material adverse effect on the operations of the Project or Developer's ability to perform its obligations under this Tolling Services Agreement.
  - (vii) Developer is the "Developer" named in the Agreement and is the legal and valid holder of the Developer's Interest under the Agreement.
  - (viii) Developer has delivered to the trustee under the Project Trust Agreement a written certificate (A) naming TxDOT as the exclusive "Toll Operator" entitled to the benefits and protections of the provisions of the Project Trust Agreement pertaining to Toll Operators and (B) revoking any prior naming of the NTTA as a "Toll Operator;" and Developer has not and will not, so long as this Tolling Services Agreement is in effect, revoke such certificate or name a different or additional Person as "Toll Operator."
- (c) The foregoing representations and warranties of TxDOT and Developer shall survive for a period of two years following the expiration or earlier termination of this Tolling Services Agreement.
  - (d) Developer covenants and agrees that it will maintain its existence and will remain in good standing in the State of Texas throughout the Term of this Tolling Services Agreement and will maintain its existence for as long thereafter as any obligations remain outstanding under this Tolling Services Agreement. The provisions of this Section 18(d) shall survive the expiration or earlier termination of this Tolling Services Agreement.

## 19. Default and Remedies

### (a) Developer Default and TxDOT Remedies.

- (i) Developer shall be in default under this Tolling Services Agreement in the event (A)(1) subject to Section 6(i), Developer fails to make any payment to TxDOT when due hereunder or (2) Developer fails to perform any other obligation of Developer hereunder (i.e., any obligation other than payment obligations covered by the preceding clause (1)), and either such failure continues for 30 days (or, with respect to obligations covered by clause (2) above, if such failure cannot be cured within 30 days but Developer has begun diligently pursuing a cure within such 30 days and continues to diligently pursue such cure, 90 days) after

TxDOT delivers written notice thereof to Developer, (B) Developer shall file a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law, (C) Developer shall consent to an involuntary petition in bankruptcy against it or fail to vacate within 60 days from the date of entry thereof any order approving an involuntary petition in bankruptcy against it, (D) an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Developer as bankrupt or insolvent or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for 60 days after its entry, (E) any representation or warranty of Developer hereunder was not true when made and such failure has a material adverse effect on Developer's ability to perform its obligations in accordance with the requirements of this Tolling Services Agreement, or (F) Developer assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement.

- (ii) In the event of a default by Developer under this Tolling Services Agreement, TxDOT shall be entitled to all rights and remedies available under this Tolling Services Agreement, at Law or in equity, including the right to terminate this Tolling Services Agreement for failure of Developer to pay any sum when due (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies); provided that with respect to termination (A) TxDOT shall first deliver to Developer written notice of election to terminate, (B) termination shall be effective the first to occur of (1) 180 days after TxDOT delivers such notice to Developer, or (2) the date Developer and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services, and (C) pending the effective date of termination, TxDOT shall continue to diligently perform the services hereunder, including assisting with transition of services as set forth in Section 3(c). TxDOT's recoverable damages (following any termination of this Tolling Services Agreement) shall include the unamortized portion of all TxDOT's reasonable direct costs to prepare and mobilize for performance of this Tolling Services Agreement, including equipment costs, costs of interface coordination, hiring and training costs, and similar costs directly attributable to such preparation and mobilization. Such costs shall be deemed amortized on a straight-line basis over a period of five years starting on the Cutover Date.
- (iii) No remedy referred to in this Section 19(a) is intended to be exclusive, but, to the extent permissible hereunder and under applicable Laws, each remedy shall be cumulative and in addition to any other remedy referred to above or otherwise available to TxDOT under applicable Laws. To the extent that any Developer default under this Tolling Services Agreement also constitutes a

default by Developer under the Agreement, TxDOT's rights and remedies shall in no way be limited to those specified in this Tolling Services Agreement.

- (iv) Provided that Developer shall have given written notice to TXDOT of any Lender and/or Collateral Agent that Developer desires should have the right (but not the obligation) to cure any default by Developer hereunder, and the address for notice to such Lender and/or Collateral Agent, TXDOT shall deliver to such Lender and/or Collateral Agent written notice of any default by Developer hereunder at the same time as delivery of the default notice to Developer. Such Lender and/or Collateral Agent shall have the right (but not the obligation) to cure such default within the same period of time granted to Developer hereunder, plus, in the case of a default under Section 19(a)(i)(A) or (E), an additional 30 days (15 days in the case of a payment default) following the expiration of the cure period afforded to Developer hereunder. If such default has not been cured by the expiration of the cure period provided herein, regardless of whether an event of default has occurred and is continuing under any loan documents between such Lender and/or Collateral Agent and Developer, or whether such Lender and/or Collateral Agent has exercised any rights or remedies with respect thereto, TXDOT shall have and may exercise all the rights and remedies otherwise available to it under, or referenced in, this Tolling Services Agreement.

(b) TxDOT Default and Developer's Remedies.

- (i) TxDOT shall be in default under this Tolling Services Agreement in the event (A) TxDOT fails to make any payment to Developer when due hereunder and the failure to pay continues for 30 days after Developer delivers written notice thereof to TxDOT; (B) any representation or warranty of TxDOT hereunder was not true when made and such failure has a material adverse effect on TxDOT's ability to perform its obligations in accordance with the requirements of this Tolling Services Agreement; (C) TxDOT assigns its rights and obligations under this Tolling Services Agreement in violation of this Tolling Services Agreement; or (D) TxDOT fails to perform any other obligation of TxDOT hereunder, and the failure to perform such other obligation continues for 30 days after Developer delivers written notice thereof to TxDOT, or if TxDOT has begun diligently pursuing a cure of such failure within such 30 days and continues to diligently pursue such cure, then 90 days after Developer delivers written notice thereof to TxDOT.
- (ii) In the event of a default by TxDOT under this Tolling Services Agreement, subject to Section 19(e), Developer shall be entitled to recover all losses and damages incurred as a result of TxDOT's default, with the amount of such damages to include, and not involve double counting of, all Delinquent Payment

Deductions and Non-Compliance Deductions from the TxDOT Compensation made pursuant to Section 6 by reason of such default. For the avoidance of doubt, the application of Delinquent Payment Deductions and Non-Compliance Deductions under this Tolling Services Agreement shall constitute only a monetary offset and not a cure for the relevant event (and shall not be deemed to be an exclusive remedy).

- (iii) In the event of a default by TxDOT under this Tolling Services Agreement, Developer shall be entitled to all other rights and remedies available under this Tolling Services Agreement, at Law or in equity, including the right to terminate this Tolling Services Agreement for failure of TxDOT to pay any sum when due (each of which rights and remedies shall be cumulative and in addition to any such other rights and remedies); provided that with respect to termination (A) Developer shall first deliver to TxDOT written notice of election to terminate, (B) termination shall be effective the first to occur of (1) 180 days after Developer delivers such notice to TxDOT; (2) the date Developer and/or its replacement contractor for toll collection and enforcement services is ready to commence performing such services, and (3) any other date specified by Developer, and (C) pending the effective date of termination, Developer shall continue to diligently work with TxDOT to perform the services hereunder, including assisting with transition of services as set forth in Section 3(c).
- (iv) No remedy referred to in this Section 19(b) is intended to be exclusive, but, to the extent permissible hereunder and under applicable Laws, each remedy shall be cumulative and in addition to any other remedy referred to above or otherwise available to Developer under applicable Laws.

(c) Remedial Measures.

- (i) In the event that the number of Non-Compliance Points (determined pursuant to Attachment 2), cured or uncured, assessed against TxDOT is greater than thirty percent (30%) of the total assessable Non-Compliance Points for each month in any period of three consecutive calendar months during the Term, then, at the Developer-TxDOT Regular Meeting following the third such calendar month, Developer may request TxDOT to prepare a plan for the correction of the applicable non-compliance and, in such case, TxDOT shall deliver to Developer such corrective plan no later than 15 days following Developer's request, and TxDOT thereafter shall implement such plan and exercise diligent efforts to correct the applicable non-compliance. In the event that the number of Non-Compliance Points, cured or uncured, assessed against TxDOT is not reduced to or below thirty percent (30%) of the total assessable Non-Compliance Points for the calendar month that is the second full calendar month following TxDOT's

delivery of such corrective plan to Developer, then TxDOT shall prepare and submit to Developer for Developer's approval a remedial plan complying with the requirements of Section 19(c)(ii). Notwithstanding the foregoing, in the event that the number of Non-Compliance Points (determined pursuant to Attachment 2), cured or uncured, assessed against TxDOT is greater than fifty percent (50%) of the total assessable Non-Compliance Points for any month during the Term, then TxDOT shall thereupon prepare and submit to Developer for Developer's approval a remedial plan complying with the requirements of Section 19(c)(ii). Developer shall not unreasonably withhold or delay its approval of a remedial plan delivered pursuant to this Section 19(c)(i).

- (ii) The remedial plan shall set forth a schedule and specific actions to be taken by TxDOT to (A) reduce the number of monthly Non-Compliance Points in any calendar month to no more than thirty percent (30%) of the total assessable Non-Compliance Points, (B) reasonably assure performance at levels required by this Tolling Services Agreement, and (C) reasonably assure prevention of recurrence of Non-Compliance Points in excess of thirty percent (30%) of the total assessable Non-Compliance Points in any calendar month. Such actions may include improvements to TxDOT's quality management practices, plans and procedures, revising and restating management plans, changes in organizational and management structure, increased monitoring and inspections, changes in key personnel, changes in training programs, and replacement of contractors.
- (iii) TxDOT shall diligently and in good faith carry out all actions described in the approved remedial plan according to the schedule set forth in the remedial plan. If TxDOT shall fail to take any action described in the approved remedial plan in accordance with the schedule set forth in the remedial plan, then such failure shall constitute grounds for Developer to terminate this Tolling Services Agreement.
- (iv) TxDOT shall deliver to Developer a monthly written report, in reasonable detail, of TxDOT's progress in carrying out the approved remedial plan. At Developer's request, TxDOT shall allow Developer to inspect TxDOT's books and records, and monitor TxDOT's procedures and practices, to the extent relating to, and as reasonably required to verify proper implementation of, the remedial plan.
- (v) Notwithstanding the foregoing provisions of this Section 19(c) with respect to TxDOT's preparation, submittal and implementation of the remedial plan provided for in the next to last sentence of Section 19(c)(i), if at the time TxDOT is required to submit such remedial plan to Developer hereunder, Developer is able to, and does, provide to TxDOT written evidence reasonably

demonstrating that TxDOT's non-performance under this Tolling Services Agreement has caused traffic on, and revenue from, the Project to decrease, then TxDOT shall have 30 days thereafter to correct its non-performance, with the determination concerning whether such non-performance has been corrected to be based on whether TxDOT has reduced the number of Non-Compliance Points for such 30-day period to no more than thirty percent (30%) of the total assessable Non-Compliance Points. If TxDOT shall fail to correct such non-performance by the end of such 30-day period, then such failure shall constitute grounds for Developer to terminate this Tolling Services Agreement.

(d) Interest and Late Charges.

- (i) Except as provided with respect to the Delinquent Payment Deduction, any sum owing from one Party to the other that is not paid when due shall bear interest at a floating rate equal to the LIBOR in effect from time to time, commencing on the date due and continuing until paid.
- (ii) In addition to interest, in the event either Party fails to pay to the other Party when due any amount set forth in an invoice received pursuant to Section 6(h) that is undisputed or is disputed but finally determined to be payable, such Party shall owe and pay to the other Party a one-time late charge equal to 3% of the undisputed amount or the amount finally determined to be payable, as applicable; provided, however, that if in connection with the resolution of any dispute between the Parties concerning any amount payable hereunder, the applicable Party from whom payment is owed shall deposit an amount equal to the amount in controversy into the Toll Operator Dispute Account and such amount is held therein and disbursed in accordance with the resolution of the related dispute, then such late charge shall not apply.

(e) Limitations on Liability.

- (i) Notwithstanding any other provision of this Tolling Services Agreement and except as set forth in Section 19(e)(ii), to the extent permitted by applicable Law, neither Party shall be liable for punitive damages or special, indirect or incidental consequential damages or loss of profit or income arising out of breach of this Tolling Services Agreement, tort (including negligence) or any other theory of liability, and each Party hereby releases the other Party from any such liability.
- (ii) The foregoing limitation on liability for special, indirect and incidental consequential damages or loss of profit or income shall not apply to or limit any right of recovery one Party may have against the other Party under applicable Law respecting the following:

- (A) Losses, damages, debts, obligations and liabilities (including defense costs) to the extent covered by the proceeds of insurance actually carried by or insuring the liable Party;
- (B) Losses, damages, debts, obligations and liabilities arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence;
- (C) Developer's obligation to pay compensation to TxDOT under this Tolling Services Agreement as set forth in Section 6; provided, however, that to the extent pursuant to applicable Law TxDOT is entitled to claim from Developer damages that result from an early termination (other than an early termination due to a default by TxDOT hereunder) and constitute a measure of future compensation, the aggregate amount of such damages, if any, that may be payable to TxDOT for such lost future compensation in respect of the remaining period of the stated Term of this Tolling Services Agreement (without regard to such early termination hereof) following the date of any such termination hereof shall not exceed the TxDOT Prospective Compensation Damages Limit (and for the avoidance of doubt, it is acknowledged that such limitation applies only in respect of TxDOT's prospective compensation that would be lost as a consequence of the early termination of this Tolling Services Agreement, and such limitation shall not apply to limit any claims of TxDOT relating to (i) any compensation accrued and owing to TxDOT under this Tolling Services Agreement as of the date of any termination of this Agreement by TxDOT due to a default by Developer hereunder, (ii) amounts owing to TxDOT in connection with any such termination in respect of TxDOT's recoverable unamortized costs and expenses related to its services hereunder), or (iii) any Developer breach or failure to perform under the Agreement;
- (D) Loss of Toll Revenues owing to Developer, attributable to a TxDOT breach or failure to perform;
- (E) Damages that are owing by a Party under another agreement or contract pertaining to the Project (including, without limitation, the Agreement) or the services under this Tolling Services Agreement and that are incurred due to the other Party's breach of this Tolling Services Agreement;
- (F) Transition costs incurred by Developer or TxDOT upon its proper exercise of a right to terminate this Tolling Services Agreement;

- (G) In the event of Developer's proper exercise of a right to terminate this Tolling Services Agreement, costs Developer incurs to procure, hire, transition to and compensate a replacement service provider for comparable services for the remainder of the term after termination, to the extent the compensation exceeds that which would be owing to TxDOT for the remainder of the term, subject to the limitation that damages related to any difference in level of compensation of the replacement service provider shall not exceed the Replacement Provider Compensation Damages Limit;
- (H) Specific amounts either Party may owe or be obligated to reimburse to the other Party under the express provisions of this Tolling Services Agreement in respect of any period prior to termination;
- (I) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that this Tolling Services Agreement expressly states are due from one Party to the other Party; and
- (J) Any credits, deductions or offsets that this Tolling Service Agreement expressly provides to a Party against amounts owing to the other Party.

(f) Mitigation of Damages.

Each Party acknowledges its duty at law to mitigate damages arising out of the other Party's breach or failure to perform. For the benefit of TxDOT, both Parties also shall use reasonable efforts to mitigate damages in the event this Tolling Services Agreement is terminated by reason of a Termination for Convenience of the Agreement or termination of the Agreement due to TxDOT Default or suspension of work.

20. Dispute Resolution

Sections 17.7 and 17.8 of the Agreement, and the provisions referenced therein, shall govern all disputes under this Tolling Services Agreement and are hereby incorporated by reference as though set forth in full herein, except that:

- (a) Wherever the term "the CDA Documents" is used it is replaced with the phrase "this Tolling Services Agreement;"
- (b) Section 17.8.1.5(b) of the Agreement is changed to read, "Any claim or dispute that does not arise under this Tolling Services Agreement or the CDA Documents;"
- (c) The following language is added to Section 17.8.4.1(a) of the Agreement: "Wherever in the Disputes Board Agreement there is a reference to the Agreement and/or specific sections of the Agreement, for purposes of

Disputes under this Tolling Services Agreement it shall be deemed to refer to this Tolling Services Agreement and the provisions of Section 17.8 of the Agreement incorporated herein;" and

- (d) Wherever the term "Effective Date" is used it is replaced with the phrase "date this Tolling Services Agreement is executed."

21. [RESERVED]

22. Malfunction, Damage or Destruction of TxDOT Facilities

- (a) Refer to Section 7(a) regarding procedures to be followed where Developer does not receive acknowledgment of receipt by TxDOT's CSC Host of Transactions properly transmitted to TxDOT's CSC Host in accordance with the ICD. In addition to such procedures, at TxDOT's request Developer shall attempt re-transmission of any such Transaction every two hours for a period of 24 hours after the first time Developer properly transmits the Transaction in accordance with the ICD.
- (b) TxDOT shall be entitled to the relief set forth in Section 22(d) in the following circumstances:
  - (i) TxDOT's customer service center or information technology system used to provide the services set forth in this Tolling Services Agreement, or the building in which such customer service center or information technology system is housed, is physically damaged or destroyed or otherwise precluded from processing Transactions due to a state of public emergency and as a result thereof TxDOT is rendered unable to normally receive or process Transactions for payment;
  - (ii) The event causing the damage, destruction or state of public emergency (and the effects of such event) (A) are not caused by the negligence or willful misconduct or other culpability of TxDOT or its officers, employees, agents or representatives, and (B) could not have been avoided by the exercise of caution, due diligence or reasonable care or efforts by TxDOT; and
  - (iii) The inability to render such services continues for a period in excess of two consecutive days.
- (c) TxDOT shall take all steps reasonably necessary to mitigate the consequences of the foregoing circumstances, including implementing its emergency backup and recovery systems and procedures. TxDOT shall bear the costs of repair to and restoration of its own facilities required as a consequence of the events and occurrences contemplated by this Section.
- (d) If TxDOT establishes that the circumstances described in Section 22(b) exist, then:

- (i) TxDOT shall be entitled to an extension of time to make payments to Developer regarding Transactions that it is rendered unable to normally receive or process for payment due to such circumstances, provided that such extension of time shall apply only to Transactions that occur up to the 30<sup>th</sup> consecutive day that TxDOT is unable to normally receive or process Transactions for payment. For those Transactions for which TxDOT is entitled to an extension of time, it shall make payment to Developer for the toll charges associated with such Transactions on the first to occur of (A) five Business Days after TxDOT restores service and receives the Transaction at TxDOT's CSC Host or TxDOT's back-up system, or (B) the date that is the later of (1) 30 days after the Transaction occurs and (2) five Business Days after the date Developer delivers to TxDOT in digital form the data for the Transaction that would have been received at TxDOT's CSC Host absent the foregoing circumstances.
- (ii) All toll charges whose payment is deferred pursuant to this Section 22(d), as a consequence of the circumstances described in Section 22(b), beyond the date payment would otherwise be due under Section 6 shall bear interest at a floating rate equal to the LIBOR in effect from time to time, commencing on the date it would be due absent the deferral and continuing until paid. TxDOT shall pay such interest concurrently with its payment of the deferred toll charges.
- (iii) Non-Compliance Points shall not be assessed against TxDOT as a result of inability to perform its obligations due solely and directly to the circumstances described in Section 22(b).
- (iv) For the avoidance of doubt, if any payments owing by TxDOT are delayed due to a malfunction that is not attributable to the circumstances described in Section 22(b), then TxDOT shall not be excused from any penalties or other consequences of such delayed payment provided for in this Tolling Services Agreement, (including, as applicable, the Delinquent Payment Deductions and any rights and remedies Developer may have hereunder).
- (e) During any period that TxDOT is unable to normally receive or process Transactions for payment, or to render other services hereunder, due to the circumstances described in Section 22(b), Developer shall be free to seek and obtain temporary substitute services elsewhere. TxDOT shall have no right to compensation, and no liability for payment to Developer, respecting Transactions that Developer chooses to process through any such substitute service provider. If TxDOT remains unable to normally receive or process Transactions for payment, or to render other services hereunder, due to the circumstances described in Section 22(b) for more than 90 consecutive days, then notwithstanding that such situation shall not constitute a default by TxDOT, (i) Developer shall have the right to terminate this Tolling Services Agreement and (ii) TxDOT shall reimburse Developer all costs and expenses Developer incurs in connection with the

transfer of the services, functions, rights and responsibilities to Developer, its contractors or designee; provided, however, that TxDOT shall not be liable for any such transfer costs and expenses in excess of the amount that is equal to 200% of the amount that could reasonably be expected to be incurred in connection with any such transfer from NTTA to TxDOT.

23. Assignment; New TSA

- (a) Developer shall have the right to assign this Tolling Services Agreement only to the extent that it is permitted to assign the Developer's Interest pursuant to Section 21 of the Agreement.
- (b) Any acceptance by a Lender or any of their respective successors, assigns or designees of assignment of this Tolling Services Agreement pursuant to Section 23(a) shall not operate to make the assignee responsible or liable for any breach hereof by Developer or for any amounts due and owing hereunder for work or services rendered prior to assumption (but without restriction on TxDOT's rights to suspend work or demobilize due to Developer's uncured default).
- (c) TxDOT acknowledges that this Tolling Services Agreement is for the personal services of TxDOT. Accordingly, TxDOT shall have the right to assign this Tolling Services Agreement only as follows:
  - (i) Without Developer's consent, to any other Person that succeeds to (A) all the governmental powers and authority of TxDOT or (B) all the tolling service functions and operations of TxDOT in the State; and
  - (ii) To any other Person only with the prior written consent of Developer in its sole discretion.
- (d) No assignment shall relieve the assigning Party from any liability under this Tolling Services Agreement arising prior to the effective date of assignment, or impair any of the other Party's rights or remedies due to the assigning Party's default occurring prior to the effective date of assignment.
- (e) In the event that (i) the CDA Documents and this Tolling Services Agreement are terminated under circumstances in which, under the terms of Section 20.4.8 of the Agreement, a Lender or Substituted Entity would have the option to enter into New Agreements with TxDOT, and (ii) such Lender or Substituted Entity elects under Section 20.4.8 of the Agreement to enter into New Agreements, then such Lender or Substituted Entity and TxDOT also shall enter into a new Tolling Services Agreement (the "New TSA"), subject to the following: (A) the New TSA shall be effective as of the date of termination of this Tolling Services Agreement and shall be for the remainder of the term of this Tolling Services Agreement, and otherwise shall be on the terms, covenants and conditions contained in this Tolling Services Agreement; (B) as a condition to the effectiveness of the New TSA and upon the execution of the New TSA by such Lender or

Substituted Entity and TxDOT, such Lender or Substituted Entity shall pay to TxDOT any and all sums that would be due under this Tolling Services Agreement but for such termination and shall otherwise fully remedy any existing defaults by Developer under this Tolling Services Agreement (provided, however, that with respect to any such defaults by Developer that cannot be cured until such Lender or Substituted Entity obtains possession of the Project, such Lender or Substituted Entity shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity, to cure such defaults, in any event not to exceed 180 days after the date it obtains possession); and (C) as a condition to the effectiveness of the New TSA and upon the execution of the New TSA by such Lender or Substituted Entity and TxDOT, without duplication of any amounts previously paid by Developer, such Lender or Substituted Entity shall pay to TxDOT all reasonable costs and expenses incurred by TxDOT in connection with (1) Developer's default and the termination of this Tolling Services Agreement, (2) the assertion of rights, interests and defenses in any bankruptcy proceeding, (3) all TxDOT Compensation earned by TxDOT during any period of possession of the Project by TxDOT, except to the extent recovered by TxDOT from Toll Revenues earned during such period of possession, and (4) the preparation, execution and delivery of the New TSA. Upon request of the applicable Lender or Substituted Entity, TxDOT will provide a written, documented statement of the costs and expenses described in clause (C) of the preceding sentence. In the event this Tolling Services Agreement is terminated as a result of any bankruptcy or insolvency proceeding of Developer in which the Agreement is not terminated and New Agreements are not to be entered into by a Lender or Substituted Entity under Section 20.4.8 of the Agreement, then, without limiting any obligation of Developer, any Lender or any Substituted Entity under applicable law to enter into a new Tolling Services Agreement with TxDOT, upon a Lender's or Substituted Entity's written request delivered to TxDOT within 60 days of such termination, such Lender or Substituted Entity and TxDOT shall enter into a New TSA subject to the terms and conditions set forth in clauses (A) through (C) of the second preceding sentence (and TxDOT will reasonably cooperate with Lender or such Substituted Entity in Lender's or such Substituted Entity's procurement of any court, trustee or regulatory approvals required for such New TSA, subject to Lender's or such Substituted Entity's payment of the reasonable costs and expenses of TxDOT incurred in connection therewith). The provisions of this Section 23(e) shall survive the termination of this Tolling Services Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 23(e) were a separate and independent contract made by TxDOT and the Lender or Substituted Entity.

24. Special Provisions for Compliance with Agreement

- (a) TxDOT agrees to recognize and attorn to any Lender upon receipt of written notice from the Lender that it has exercised step-in rights under the Agreement. If TxDOT receives any such notice, it shall have no obligation to obtain Developer's consent or approval, and no obligation to

determine whether the Lender validly exercised its step-in rights. Developer hereby waives and releases any claim or cause of action against TxDOT arising out of or relating to its recognition and attainment in reliance on any such written notice.

- (b) This Tolling Services Agreement shall automatically terminate, without further notice, upon any termination of the Agreement, without liability of TxDOT for any Developer lost profits, lost business opportunity or any other loss, damage, cost or expense (without prejudice to Termination Compensation under the Agreement); and without liability of Developer for any TxDOT loss, damage cost or expense, except for TxDOT's unamortized costs described in Section 18(a)(ii), (without prejudice to TxDOT's right to damages under the Agreement).

25. Labor Practices

- (a) TxDOT at all times shall comply, and require by contract that all its subcontractors and vendors performing services under this Tolling Services Agreement comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.
- (b) TxDOT shall not, and shall cause any subcontractor to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the services under this Tolling Services Agreement. TxDOT shall carry out, and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by TxDOT to carry out these requirements is a material breach of this Tolling Services Agreement, which may result in termination hereof or such other remedy permitted hereunder as Developer deems appropriate. TxDOT shall include this provision in every subcontract (including purchase orders) pertaining to the services under this Tolling Services Agreement.
- (c) TxDOT confirms for itself and all subcontractors providing services under this Tolling Services Agreement that TxDOT and each such subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that TxDOT and each such subcontractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. TxDOT shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions set forth in Exhibit 8 to the Agreement, and shall require such subcontractors to comply with such provisions.

26. Designation of Authorized Representatives

TxDOT and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement ("Authorized Representative"). Attachment 7 to this Tolling Services Agreement provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing

delivered to the other Party in accordance with Section 27. The Parties shall cause their respective Authorized Representatives to cooperate and coordinate with one another in the administration of this Tolling Services Agreement.

27. Notices

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

If to the Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

If to TxDOT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

or to such other addresses and such other places as any party hereto may from time to time designate by written notice to the others.

(b) All notices and other communications required or permitted under this Tolling Services Agreement which are addressed as provided in this Section 27 are effective upon delivery, if delivered personally or by overnight mail, facsimile or electronic mail and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

28. [RESERVED]

29. Amendment

This Tolling Services Agreement may be amended only if in writing executed by Developer and TxDOT.

30. Independent Engineer

As soon as practicable following the Parties' execution and delivery of this Tolling Services Agreement, and in any event no later than 6 months thereafter, the Parties shall engage an independent third party engineering firm (the "Independent Engineer") to provide the services that this Tolling Services Agreement states are to be provided by the Independent Engineer. The Independent Engineer shall have at least ten years' experience in the provision of services that are the same as those contemplated to be provided by the Independent Engineer hereunder. The Parties shall engage the Independent Engineer pursuant to a three-party agreement among, and containing terms and conditions reasonably acceptable to, Developer, TxDOT and the Independent Engineer (the "Independent Engineer Agreement"), which Independent Engineer Agreement shall provide for, among other things, the right by each Party to unilaterally remove the then acting Independent Engineer (i) for cause or (ii) once every five years without cause; provided, however, that in connection with the removal and replacement of the Independent Engineer without cause, the Party effecting the removal shall bear the costs and expenses of both Parties that are related to the engagement of a successor Independent Engineer. The Independent Engineer Agreement shall include provision for the equal allocation, between Developer and TxDOT, of the costs and expenses of the Independent Engineer in the performance of its services under the Independent Engineer Agreement. The Independent Engineer engaged by the Parties pursuant to the terms hereof may be, but shall not be required to be, the same Person engaged as the Independent Engineer (as defined in the Agreement) under the Agreement. The Independent Engineer is to perform the functions provided for under this Tolling Services Agreement and the Independent Engineer Agreement and to assist and advise the Parties concerning its findings and recommendations. The Independent Engineer's determinations are not final and binding. If there is a continuing disagreement between the Parties concerning any matter subject to review by the Independent Engineer following the Independent Engineer's review and recommendation in respect thereof, such disagreement shall be resolved pursuant to Section 20 hereof. The Parties agree not to disclose the findings, reports or other work product of the

Independent Engineer to any person other than a Permitted Person; provided, however, that such non-disclosure restriction shall not apply to any information as and to the extent required to be disclosed by applicable law or to information that becomes public other than by virtue of a breach of this restriction, and such non-disclosure restriction also shall not preclude disclosure of information to any applicable arbitrator or court in a dispute resolution proceeding pursuant to Section 20 hereof. Permitted Persons shall be informed of the confidential nature of the information disclosed to them and shall be required to agree to act in accordance with the provisions of the foregoing non-disclosure provisions with respect to such information.

31. Non-Disparagement

Each Party agrees not to make any statement, written or oral, to any third party which disparages or criticizes the other Party or the other Party's respective officers, directors, agents, or management and business practices, in each case in connection with the performance or administration of this Tolling Services Agreement or in connection with any matter related hereto. The provisions of this Section 31 shall not apply to any truthful statement required to be made by either Party, or such Party's officers, directors or agents, as the case may be, in any legal proceeding or governmental or regulatory investigation or to any internal discussions or communications between the Parties.

32. Governing Law

The laws of the State of Texas shall govern this Tolling Services Agreement.

33. Interpretation

- (a) The title headings of the respective paragraphs of this Tolling Services Agreement are inserted for convenience only, and shall not be deemed to be part of this Tolling Services Agreement or considered in construing this Tolling Services Agreement.
- (b) Wherever the word "including," "includes" or "include" is used in this Tolling Services Agreement, it shall be deemed to be followed by the words "without limitation".
- (c) All references to "Section" or "subsection" means the Section or subsection of this Tolling Services Agreement unless specifically provided otherwise.
- (d) This Tolling Services Agreement includes all the Attachments hereto.

34. Counterparts

This Tolling Services Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

35. Modification of Base Transaction Fee and Variable Transaction Fee Related to Tolling Commencement for Project Segments Rather than the Project as a Whole

In the event that Developer is to develop the Project in Project Segments rather than as a whole and this Tolling Services Agreement takes effect before the Service Commencement Date for the last Project Segment, then:

- (a) The Base Transaction Fee set forth in Section 6(b) and the Variable Transaction Fee set forth in Section 6(c) may be adjusted by TXDOT as follows: TXDOT shall utilize Developer's Base Case Financial Model projections with respect to (i) traffic and Toll Revenues for the Project Segments for which Service Commencement has occurred, (ii) the respective percentages of Transponder Transactions and Video Transactions for the Project Segments for which Service Commencement has occurred, and (iii) other pertinent data relating to the Project Segments for which Service Commencement has occurred and shall apply the methodology utilized to develop the Base Transaction Fee and Variable Transaction Fee for the entire Project and set forth in Section 6 to determine the Base Transaction Fee and the Variable Transaction Fee for the Project Segments for which Service Commencement has occurred; and
- (b) Upon completion of the Project as a whole, the Base Transaction Fee and the Variable Transaction Fee shall be as set forth in Section 6(b) and 6(c), respectively, of this Tolling Services Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Tolling Services Agreement as of the date first written above.

Attest:  
  
\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

**TxDOT**

**TEXAS DEPARTMENT OF  
TRANSPORTATION,**

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

**Developer**

**LBJ INFRASTRUCTURE GROUP LLC,**  
a Delaware limited liability company

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

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

## Attachment 1

### Definitions

#### Definitions from Agreement

The following lists the capitalized terms that are used in this Tolling Services Agreement and defined in the Agreement:

Affiliate  
CDA Documents  
Change in Law  
Chief Executive Officer of Developer  
Contractor  
Customer Groups  
Day or day  
Developer's Interest  
Directive Letter  
Disputes Board  
Disputes Board Agreement  
Disputes Board Decision  
Disputes Board Member Conflict of Interest  
Disputes Board Member Misconduct  
Dispute Resolution Procedures  
Proposal Due Date  
Electronic Toll Collection System, or ETCS  
Executive Director  
Exempt Vehicles  
Fast-Track Dispute  
Force Majeure Event  
Good Industry Practice  
Grounds for Appeal  
Incidental Charges  
Informal Resolution Procedures  
Laws  
Lender  
New Agreements  
NTTA  
NTTA Tolling Services Agreement  
Person  
Project  
Project Segment  
Project Trust Agreement  
Service Commencement Date  
Special Vehicles  
Substituted Entity  
Technical Documents  
Technical Provisions  
Termination for Convenience  
Toll Revenue  
Toll Revenue Account

User  
User Classification  
Video Transaction  
User

Additional Definitions are as follows:

**Agreement** means the certain Comprehensive Development Agreement dated \_\_\_\_\_, 2009 between Developer and TxDOT concerning the Project.

**Authorized Representative** means the individuals authorized to make decisions and bind the Parties on matters relating to this Tolling Services Agreement pursuant to Section 26.

**Average Monthly TxDOT Compensation** means (i) after this Tolling Services Agreement has been in effect for a period of at least 12 full calendar months following the Service Commencement Date for the final Project Segment to be developed as part of the Project pursuant to the Agreement, one twelfth (1/12) of the total TxDOT Compensation for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT Compensation or (ii) prior to such time as this Tolling Services Agreement has been in effect for 12 full calendar months following the Service Commencement Date for the final Project Segment to be developed as part of the Project pursuant to the Agreement, the monthly average of the TxDOT Compensation for the number of full calendar months during which this Tolling Services Agreement has been in effect following the Service Commencement Date for the Project Segment most recently developed prior to the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT Compensation.

**Average Monthly TxDOT Cost of Services** means (i) after this Tolling Services Agreement has been in effect for a period of at least 12 full calendar months following the Service Commencement Date for the final Project Segment to be developed as part of the Project pursuant to the Agreement, one twelfth (1/12) of TxDOT's total cost of providing services hereunder for the 12 full calendar months immediately preceding the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT Cost of Services or (ii) prior to such time as this Tolling Services Agreement has been in effect for 12 full calendar months following the Service Commencement Date for the final Project Segment to be developed as part of the Project pursuant to the Agreement, the monthly average of TxDOT's total cost of providing services hereunder for the number of full calendar months during which this Tolling Services Agreement has been in effect following the Service Commencement Date for the Project Segment most recently developed prior to the termination of this Tolling Services Agreement requiring a determination of the Average Monthly TxDOT Cost of Services. TxDOT's total cost of providing services used for purposes of determining the Average Monthly TxDOT Cost of Services shall not include any costs that otherwise would be included in the total cost of providing services hereunder that have actually been recovered by TxDOT through the collection of Incidental Charges.

**Base Transaction Fee** has the meaning set forth in Section 6(b).

**Business Day** means a day on which TxDOT is officially open for business.

**Candidate Vehicle** means a vehicle for which Developer transmits one of the following to TxDOT's CSC Host:

- (a) A valid Transponder Transaction; or
- (b) (i) a Video Transaction with an unobstructed readable video image of a license plate that bears a serialized or personalized plate number and means to identify the issuing jurisdiction, which in the case of a vehicle with a trailer (including a truck with a trailer) must be the front license plate, and (ii) video data as required by the ICD.

For this purpose, a "readable video image" means an image produced by the VES and transmitted to TxDOT's CSC Host in which both plate number and issuing jurisdiction can be reliably read electronically or by the human eye.

**Change Directive** means a written direction signed by Developer directing a change in the services that complies with the requirements of Section 17(a).

**Change Order** means a written order issued by Developer to TxDOT delineating changes in services or in technical terms and conditions (including changes in the standards) applicable to the services in accordance with Section 17 and establishing, if appropriate, an adjustment to TxDOT's compensation in accordance with Section 17.

**Claim** means (a) a demand by Developer, which is or potentially could be disputed by TxDOT, for 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.

**Consolidated Master List** has the meaning set forth in Section 12(d).

**Custodial Arrangements** means the arrangements TxDOT is to put into effect, as and when set forth in Section 8.7.7 of the Agreement, with its custodian of accounts for TxDOT's transponder account customers for the handling and remittance of debits for Transponder Transactions and of payments from Users for Video Transactions and from Special Vehicle operators, the purpose of which is to cause amounts so debited or received to be held in trust by the custodian until it deposits such amounts to the Toll Revenue Account or Toll Operator Dispute Account under the Project Trust Agreement, without at any point becoming property or assets of TxDOT or the State.

**Cutover Date** means the date all applicable services, functions, rights and responsibilities of the NTTA have been properly transferred to TxDOT and TxDOT commences providing services under this Tolling Services Agreement for the Project (or the Project Segment(s) for which Service Commencement has occurred prior to the date this Tolling Services Agreement takes effect, if Developer develops the Project in Project Segments and this Tolling Services Agreement takes effect before the Service Commencement Date for the final Project Segment).

**Delinquent Payment Deduction** has the meaning set forth in Section 6(d).

**Developer** means LBJ Infrastructure Group LLC, a Delaware limited liability company.

**Developer-TxDOT Regular Meeting** has the meaning set forth in Section 4(k).

**Dispute** means any Claim, dispute, disagreement or controversy between TxDOT and Developer concerning their respective rights and obligations under this Tolling Services Agreement, including concerning any alleged breach or failure to perform and remedies.

**Duplicate Transaction** means any circumstances resulting in more than one Transaction generated from the same vehicle within two minutes at the same general location (e.g., same or adjacent lane).

**Emergency Mode** means the period and circumstances when tolls are suspended on the Project or a portion of the Project in accordance with Section 3.6 of the Agreement.

**Incidental Charges** means:

- (a) Reasonable amounts for the purchase or rental of transponders or other electronic toll devices;
- (b) Reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices;
- (c) Reasonable administrative fees for account maintenance and account statements;
- (d) Reasonable fees, penalties and interest for toll violations, including costs of collection;
- (e) Amounts, with respect to Video Transactions, reasonably necessary for TxDOT to recover (i) its reasonable out-of-pocket costs and expenses and (ii) a reasonable amount to reflect its collection risk.
- (f) Other reasonable fees and charges for customary incidental services to Users for whom TxDOT manages electronic tolling accounts (on the same basis as uniformly charged with respect to TxDOT's own facilities).

Without limiting the requirements in the preceding provisions of this definition to charge reasonable fees, charges, penalties, interest or other amounts, TxDOT shall determine and assess Incidental Charges under this Tolling Services Agreement consistent with its practices in respect of its own facilities.

**Independent Engineer** has the meaning set forth in Section 30.

**Independent Engineer Agreement** has the meaning set forth in Section 30.

**Intellectual Property Rights** means all intellectual property rights throughout the world, including all copyrights, copyright registrations and applications, patent rights, know-how, trade secrets, author's rights, algorithms, computer software and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof.

**Interface Control Document** or **ICD** means the version of the document attached as Attachment 3 most recently adopted by TxDOT prior to execution of this Tolling Services Agreement setting forth interface standards for TxDOT's CSC Host and the ETCS, including the manner in which data shall be transmitted and received between TxDOT's CSC Host and the ETCS, as such document may be revised or updated by TxDOT from time to time.

**Interoperability Functions** means electronic funds transfer and clearing functions and capabilities established and operated by TxDOT to enable the settlement and payment to the trustee under the Project Trust Agreement of electronic toll charges for Transponder Transactions on the Project by vehicles equipped with transponders issued by Toll Operators and Transponder Issuers other than TxDOT.

**Interoperable Transactions** means Transactions involving Toll Operators other than TxDOT; except that if TxDOT's provision of services under this Tolling Services Agreement has been suspended or terminated, "**Interoperable Transactions**" means Transactions involving Toll Operators other than an entity that is providing tolling services under this Tolling Services Agreement at the time of such a Transaction.

**Interoperable Transponder Transactions** means Transponder Transactions involving transponders of Transponder Issuers other than TxDOT; except that if TxDOT's provision of services under this Tolling Services Agreement has been suspended or terminated, "**Interoperable Transponder Transactions**" means Transponder Transactions involving transponders of Transponder Issuers other than an entity that is providing tolling services under this Tolling Services Agreement at the time of such a Transaction.

**New TSA** has the meaning set forth in Section 23(e).

**Non-Compliance Deduction** has the meaning set forth in Section 6(e).

**Non-Compliance Points** has the meaning set forth in Section 6(e) and Attachment 2 to this Tolling Services Agreement.

**Open Book Basis** means allowing each Party to review all underlying assumptions and data of the other Party associated with pricing or compensation (whether of Developer or TxDOT) or adjustments thereto, including assumptions and data as to marginal costs or other applicable costs, 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, inflation and deflation rates, traffic volumes by User Classification, Toll Revenues, changes in toll rates, and other items reasonably required to satisfy the Party as to the reasonableness of the amount.

**Party** means Developer or TxDOT, as the context may require, and "**Parties**" means Developer and TxDOT, collectively.

**Patron Confidential Information** has the meaning set forth in Section 4(n)(i).

**Payment Period** means each calendar month during the Term of this Tolling Services Agreement from and after the Service Commencement Date, which shall include (if the Service Commencement Date occurs on a date other than the first day of a calendar

month), the partial calendar month from and after the Service Commencement Date and which also shall include any partial calendar month at the end of the Term.

**Performance Standards** means the requirements, measures and standards for TxDOT's performance set forth in Attachment 2 to this Tolling Services Agreement.

**Permitted Person** for purposes of Section 30 of this Tolling Services Agreement means (i) the partners, members, shareholders, directors, managers, officers and employees of the Parties who have a reasonable need to know the related information, (ii) accountants, attorneys, consultants and other professionals rendering services in connection with the Project or this Tolling Services Agreement and (iii) lenders and potential lenders to the Project or to the applicable Party.

**Replacement Provider Compensation Damages Limit** means the excess, if any, of the compensation payable to a replacement service provider (as described in Section 19(e)(ii)(G)) and the compensation that would have been payable to TxDOT hereunder for the period of time equal to the greater of zero or (a) 60 months minus (b) the number of months elapsed in the Term between the Cutover Date and the effective date of termination of this Tolling Services Agreement, utilizing regular rates of compensation of such replacement service provider.

**Service Year** shall mean each twelve (12) month period commencing on the Service Commencement Date for the Project (or the initial Project Segment, if Developer develops the Project in Project Segments) or an anniversary thereof and ending on (but including) the day before the next succeeding anniversary of such Service Commencement Date.

**Statewide Confidentiality Protocols** has the meaning set forth in Section 4(n)(ii).

**Term** has the meaning set forth in Section 3(a).

**Tolling Services Agreement** means this Tolling Services Agreement between TxDOT and Developer.

**Toll Operator** means any Person, including TxDOT and Developer, who or which (a) manages and operates a tolled roadway in the State of Texas and (b) participates with TxDOT in interoperability protocols, agreements and arrangements.

**Toll Operator Dispute Account** means the trust account by that name established or to be established under the Project Trust Agreement.

**Transaction** means either a Transponder Transaction or a Video Transaction; and **Transactions** means all Transponder Transactions and Video Transactions.

**Transponder Issuer** means any Person, including TxDOT and Developer, who or which (a) issues transponders for mounting in vehicles and transacting Transponder Transactions on any tolled roadway in the State of Texas and (b) participates with TxDOT in interoperability protocols, agreements and arrangements.

**Transponder Transaction** means each electronic record, which may include video images and video data that together constitute one toll payable from a customer, that are properly transmitted to TxDOT's CSC Host in accordance with the ICD (including where

the transmission is not received due to problems, downtime or other malfunction of TxDOT's CSC Host) respecting a vehicle that (a) passes through a toll lane on the Project, (b) is equipped with a transponder issued by a Transponder Issuer, and (c) has a sufficient account balance at the time of posting or re-posting to pay in full the applicable toll rate.

**TxDOT** means the Texas Department of Transportation.

**TxDOT Compensation** has the meaning set forth in Section 6(a).

**TxDOT Prospective Compensation Damages Limit** means the greater of the following:

- (a) The amount determined by subtracting (i) the Average Monthly TxDOT Cost of Services from (ii) the Average Monthly TxDOT Compensation and multiplying the difference by 60 ; or
- (b) The amount determined by multiplying (i) the Average Monthly TxDOT Compensation by (ii) ten percent (10%) and then multiplying the product so obtained by 60.

**TxDOT's CSC Host** means the central computer system of TxDOT that supports customer service center account management functions for toll road facilities owned or operated by TxDOT.

**Unpostable Transponder Transaction** means a Transponder Transaction that cannot be posted to an TxDOT customer account due to reasons other than malfunctions of TxDOT's CSC Host.

**Variable Transaction Fee** has the meaning set forth in Section 6(c).

**Video Transaction** means each electronic record of a toll and set of contemporaneous video images of license plates and other video data (as required by the ICD) that are properly transmitted to TxDOT's CSC Host in accordance with the ICD (including where the transmission is not received due to problems, downtime or other malfunction of TxDOT's CSC Host) respecting (a) a Candidate Vehicle under subsection (b) of the definition of Candidate Vehicle that passes through a toll lane on the Project or (b) a vehicle that passes through a toll lane on the Project and is equipped with a transponder that is (i) issued by a Transponder Issuer and (ii) associated with an account not closed at the time of transmission but having an insufficient account balance at the time of debit and re-debits to pay in full the applicable toll rate.

## Attachment 2

### Performance Standards and Non-Compliance Points

Performance Standard	Std.	Points
<b>1. Non-Compliance Deduction Related Non-Compliance Points</b>		
1. Less than 5% of walk in customers at the "store front" kept waiting for greater than ten minutes before being seen by TxDOT staff, as demonstrated by statistically reliable random sampling each month.	<5% greater than 10 mins.	4
2. Call Efficiency – 80/20 service level with 80% of calls to be answered within 20 seconds.	80% in 20 seconds	3
3. Customer service requests via TxDOT's Online CSC will be responded to within 2 business days.	within 2 business days	3
4. 95% of customer service requests via email, facsimile, and postal mail will be responded to within 2 business days.	within 2 business days	2
5. Customer Service Hours – operating sales office with walk in customer service manned in-person 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding TxDOT-observed holidays		1
6. Customer Service Hours – manned telephone coverage 7 AM to 7 PM, Monday through Friday local time and 9 AM to 1 PM Saturday local time, excluding TxDOT-observed holidays, and 24 hour availability of IVR system. Faults to telephone line and/or IVR rectified as soon as possible but no later than within 24 hours, with the possible exception of faults outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control.	within 24 hours	1
7. 24X7 availability of secure customer access through TxDOT Online CSC (in English and Spanish) for account maintenance purposes (including opening an account, changing information on an account, viewing account status and statements, and replenishing an account balance, etc.). Faults that result in TxDOT Online CSC being unavailable (outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control) rectified as soon as possible but no later than within 24 hours.	within 24 hours	3
8. 24X7 availability to receive email. Faults to email availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control.	within 24 hours	1
9. 24X7 availability to receive facsimile. Faults to facsimile availability rectified as soon as possible but no later than within 24 hours. Exceptions include faults outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control.	within 24 hours	1
10. Call abandon rate less than or equal to 4%.	< or = 4%	2
11. 96% of escalations received via the Service Recovery Process receive a response within one Business Day.	96%	2
12. 96% of Customer Service Specialists will have at least two customer interactions monitored each month.	96%	3
13. The TxDOT Customer Service Center shall maintain a 90% or higher quality monitoring rating each month, based on evaluations using the quality monitoring form appended to this <a href="#">Attachment 2</a> as <a href="#">Appendix A</a> or other quality monitoring form with similar content.	>90%	3
14. TxDOT CSC Host Availability - TxDOT CSC Host shall be available to receive information from Developer on a 24X7 basis (excluding scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control). Any fault that results in TxDOT CSC Host being unavailable (outside of scheduled maintenance and failures due to non-TxDOT equipment or failures outside TxDOT's control) rectified as soon as possible but no later than within 24 hours.	24 hours	4
15. Reconciled monthly financial reports under <a href="#">Section 14(a)</a> shall be available by the 15th day of the month following the month being reported upon.	15 days	4
16. Monthly Delinquent Payment Deduction report under <a href="#">Section 14(d)</a> shall be available by the 15th day of the month following the month being reported upon.	15 days	4

17. Monthly Non-Compliance Deduction report under <b>Section 14(e)</b> shall be available by the 15th day of the month following the month being reported upon.	15 days	4
18. Determine and document disposition of 98% of customer disputes within five Business Days after notice of dispute received by telephone, by email, by written correspondence or in person. Rejection or request for further information due to insufficient information from customer constitutes a determination and disposition.	Within 5 business days	3
19. For customer disputes determined to require a refund of an overcharge, issue 99% of customer refunds (and mail if appropriate) within five Business Days after resolution of dispute.	Within 5 business days	3
20. For any customer correspondence requiring a written response, including requests for written receipts, 98% are provided a written response within three Business Days	Within 3 business days	2
21. Where relevant and to the extent not already included in TxDOT reports to the Developer, provide Developer with reports as discussed under <b>Sections 14(f) and 14(h)</b> .	N/A	5
22 TxDOT shall deliver to Developer such other information as Developer or any Lender may reasonably request (and that is reasonably available to TxDOT within the time frame for delivery contemplated for this Performance Standard) to operate the Project and to evaluate TxDOT's compliance with and performance of this Tolling Services Agreement.	Within 3 business days	1
23. TxDOT will not charge a User more than once for a single transaction submitted to the TxDOT by the Developer.	100%	3
24. TxDOT will not charge a toll different than that identified by the Developer.	100%	3

## Appendix A to Attachment 2

### Quality Monitoring Forms

(Refer to Item 13 of Attachment 2)

Call Quality 

	Yes	No	N/A
Opening			
Greets customers and thanks them for calling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Branded the call TxDOT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provided their name and department name	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obtains/Verifies necessary customer information for call type	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<div style="border: 1px solid black; height: 40px; width: 100%;"></div>			
Category Comment:			

	Yes	No	N/A
Customer Account Information			
Verify/Update account address	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Verify/Update account e-mail address	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Verify/Update account phone number	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Verify/Update account vehicle information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<div style="border: 1px solid black; height: 40px; width: 100%;"></div>			
Category Comment:			

	Yes	No	N/A
Analytical Skills			

Asks probing/clarifying questions \* (Forfeit)

Actively listens \* (Forfeit)

Category Comment:



Resolution Yes No N/A

Provides best option(s) for resolution

Utilized available tools

Accurately noted account and made appropriate changes/updates

Educates customer

Category Comment:



Call Handle Procedures Yes No N/A

Follows hold proper steps (i.e. - asks for permission, thanks for holding)

Follows proper transfer steps (i.e. - explains transfer process/follows hold procedure/debriefs person receiving transfer/Thanks Customer)

Category Comment:



Professionalism Yes No N/A

Courteous, professional tone

Speaks clearly

Uses customer name or Sir/Madam

Provides clear, concise information

Avoids use of technical/internal jargon

Manages dead air time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Avoids interrupting customer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conveys appropriate empathy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Defuses customer anger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Category Comment:

Closing	Yes	No	N/A
Summarizes call and actions taken	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Offers additional assistance and mentioned website option	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Expressed appreciation - Thank You	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Asked - Is there anything else I can help you with?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Branded the closing - TxDOT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Category Comment:

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Section Comment:

Summary

Rating:

<Automatic>
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Comments:

Microsoft Excel - ssgmform

File Edit View Insert Format Tools Data Window Help

Type a question for help

100%

Reply with Changes End Review

G5

	A	B	C	D	E	F	G	H	I	J	K
1	<b>Support Services Quality Monitoring Form</b>										
2											
3	CSS:	<input type="text"/>				Team Lead:	<input type="text"/>				
4											
5	Process:	Image Review				Date:	<input type="text"/>				
6											
7	<b>Accuracy / Timeliness</b>						<b>Score</b>				
8	<input type="text"/>						<b>40</b> of 40				
9											
10											
11											
12											
13	<b>Communication Skills / Customer Service</b>						<b>Score</b>				
14	<input type="text"/>						<b>40</b> of 40				
15											
16											
17											
18											
19	<b>Analytical Skills / Decision Making</b>						<b>Score</b>				
20	<input type="text"/>						<b>20</b> of 20				
21											
22											
23											
24											
25	<b>Total Score</b>						<b>100%</b>				
26											
27											
28											
29											

QM Form

Ready NUM

**Quality Evaluation Form – NTTA**  
(Customer Center)

CSS Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Observer: \_\_\_\_\_ Time: \_\_\_\_\_

1.0 INTRODUCTION		(Total Possible = 20) Score	Notes
1.1 Property greeted customer	<input type="checkbox"/> Yes = 10, <input type="checkbox"/> No = 0		
1.2 Offered assistance	<input type="checkbox"/> Yes = 10, <input type="checkbox"/> No = 0		
2.0 REASON FOR VISIT		(Total Possible = 20) Score	Notes
2.1 Restated customer issue for clarification	<input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5		
2.2 Asked fact-finding questions to obtain necessary information	<input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5		
2.3 Validated customer information	<input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5		
2.4 Responses indicated understanding of issue	<input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 5		
3.0 RESOLUTION		(Total Possible = 20) Score	Notes
3.1 Utilized available tools	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4		
3.2 Provided best options for resolution	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4		
3.3 Provided accurate and complete explanations	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4		
3.4 Verified customer understanding of information and/or explanation provided	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4		
3.5 Accurately noted account and made appropriate changes/updates	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 4		
4.0 CLOSING		(Total Possible = 20) Score	Notes
4.1 Mentioned website option	<input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0		
4.2 Asked, "Is there anything else I can help you with?"	<input type="checkbox"/> Yes = 10, <input type="checkbox"/> No = 0		
4.3 Expressed appreciation "Thank You"	<input type="checkbox"/> Yes = 5, <input type="checkbox"/> No = 0		
5.0 CUSTOMER EXPERIENCE		(Total Possible = 20) Score	Notes
5.1 Managed customer effectively	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0		
5.2 Consistently acknowledged customer	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
5.3 Empathized by sincerely acknowledging customer emotion	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 2		
5.4 Used effective listening skills, did not interrupt	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
5.5 Apologized when appropriate	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0, <input type="checkbox"/> NA = 2		
5.6 Clearly articulated words	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
5.7 Built rapport using winning words	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
5.8 Maintained professional tone and temper	<input type="checkbox"/> Yes = 4, <input type="checkbox"/> No = 0		
6.0 BONUS			
<input type="checkbox"/> Managed / Handled objections	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
<input type="checkbox"/> Recovered customer in difficult situations	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
<input type="checkbox"/> Prevented escalation	<input type="checkbox"/> Yes = 2, <input type="checkbox"/> No = 0		
<b>TOTAL SCORE:</b> _____	Comments: _____		

**Attachment 3**

**Interface Control Document**

**[to be attached upon execution using the ICD then in use by TxDOT]**

**Attachment 4**

**List of Transponder Models Establishing  
Benchmark Transponder Performance**

**[to be attached upon execution listing transponder models then  
generally accepted by TxDOT as benchmarks for performance]**

**Attachment 5**

**[Reserved.]**

**Attachment 6**

**[Reserved.]**

**Attachment 7**

**Initial Designation of Authorized Representatives**

**For TxDOT:**

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

Title \_\_\_\_\_

Address: \_\_\_\_\_

Office Tel: \_\_\_\_\_

Mobile Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**For Developer:**

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Office Tel: \_\_\_\_\_

Mobile Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## Attachment 8

### Example of Calculation of Delinquent Payment Deduction

<i>Typical Monthly Delinquent Payment Deduction</i>					
Month:	December, 2007				
LIBOR on 12/1/07	8%				
LIBOR + 400 basis points	12%	(100 Basis points = 1%)			
<u>Business Date</u>	<u>Due Date</u>	<u>Payment Date</u>	<u>Number of Days</u>	<u>Amount</u>	<u>Delinquent Payment Deduction</u>
12/3/2007	12/5/2007	12/6/2007	1	\$100,000.00	\$32.88
12/4/2007	12/6/2007	12/8/2007	2	\$125,000.00	\$82.19
				Total	\$115.07

## Attachment 9

### Example of Calculation of Non-Compliance Deduction

Typical Non-Compliance Deduction Calculation		
TxDOT Compensation	\$100,000.00	
Monthly Non-Compliance Reduction %	2%	For this Sample Month, the TxDOT was non-compliant in performance which resulted in 18 Non-Compliance points. The Reduction % is then 2%.
Monthly Non-Compliance Deduction	\$2,000.00	

**EXHIBIT 14**

**HANDBACK REQUIREMENTS RESERVE ELEMENTS  
AND RESERVE FUNDING MECHANISM**

1. Developer shall make deposits to the Handback Requirements Reserve by the last day of each calendar quarter, commencing with the first calendar quarter of the fifth full calendar year before the end of the Term, and continuing thereafter.
2. Developer shall make quarterly deposits into the Handback Requirements Reserve so that by the *beginning* of each of the last four years during the Term the Handback Requirements Reserve will contain an amount equal to:
  - (a) The summation across all Elements that have a number of years stated in the "Useful Life" column in Table 19-2A- Residual Life Table of the Technical Provisions of the following factors, as set forth in the most recent Renewal Work Schedule (as it may be revised pursuant to the Handback Requirements): the estimated cost to perform the Renewal Work on such Element at the end of its Useful Life multiplied by the lesser of (i) one or (ii) a fraction the numerator of which is the average Age each such Element will have as of the end of the current calendar year and the denominator of which is the total average Useful Life thereof, plus
  - (b) The summation across all other Elements (i.e. those Elements that have a number of years stated in the "Residual Life at Handback" column in Table 19-2A- Residual Life Table of the Technical Provisions) of the estimated cost to perform the Renewal Work on each other Element that is to be performed prior to expiration of the Term in accordance with the Handback Requirements multiplied by a fraction the numerator of which is four minus the number of full calendar years until the year in which the Renewal Work is scheduled to be performed pursuant to the Renewal Work Schedule (as it may be revised pursuant to the Handback Requirements) and the denominator of which is four; plus
  - (c) 10% of the amounts under clauses (a) and (b) above as a contingency.
3. Developer's quarterly deposits in a year shall equal one-fourth of the amount required to be deposited in such year as described in Section 2 above, provided that if Developer's aggregate actual draws during the current calendar year exceed the planned draws by more than 10% (including draws to fund Safety Compliance work allowed under Section 8.11.3.1 of the Agreement), Developer shall adjust its quarterly deposits for the remainder of the calendar year in order to make up the excess draws.
4. In determining the amount of Developer's deposits to be made in the current calendar year, the Parties shall take into account the total amount in the Handback Requirements Reserve at the end of the immediately preceding calendar year and Developer's planned draws from the Handback Requirements Reserve during the current calendar year.
5. If at any time during the course of Renewal Work on an Element the actual incurred costs thereof are such that the balance in the Handback Requirements Reserve for such Element

is less than the total amount required to be funded to the Handback Requirements Reserve for such Element, Developer shall promptly increase its deposits in order to fully make up the difference.

6. If after completion of and payment in full for Renewal Work on an Element there remains an unused balance in the Handback Requirements Reserve for such Element during the Term, the unused balance shall be reallocated and credited toward required balances in the Handback Requirements Reserve for other Elements.