

**COMPREHENSIVE DEVELOPMENT AGREEMENT**  
**TxDOT STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM**

Texas Department of Transportation  
Texas Turnpike Authority Division  
125 East 11<sup>th</sup> Street  
Austin, TX 78701

# COMPREHENSIVE DEVELOPMENT AGREEMENT

## TxDOT Statewide Open-Road Toll Collection System

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## **COMPREHENSIVE DEVELOPMENT AGREEMENT**

### **TxDOT Statewide Open-Road Toll Collection System**

This Comprehensive Development Agreement ("Agreement") is entered into by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and Raytheon Company, a Delaware corporation ("Developer"), effective as of January 27, 2006, as set forth on the signature page hereto, with reference to the definitions contained in Exhibit A hereto and the following recitals:

A. TxDOT wishes to develop, design, construct, install, integrate, test and maintain one or more pilot systems (each, a "Pilot System") for an open-road electronic toll collection system (the "System"), and to develop, design, construct, install, test, integrate and maintain the System on such similar and different TxDOT-owned and/or operated toll roads or portions thereof as TxDOT may, in its discretion, designate at any time during a 5-year Project Segment Designation Period. TxDOT may also, in its discretion, designate at any time during such 5-year Project Segment Designation Period a TxDOT-owned toll road operated by a regional mobility authority (an "RMA") or by a developer under contract to TxDOT (an "Other TxDOT Developer"). For any toll road designated by TxDOT, the facility so designated and the Work required to implement the System on each such designated toll road is referred to herein as a "Project Segment." Development of each Pilot System and each designated Project Segment are collectively referred to herein as the "Project." Projects operated or involving an RMA or an Other TxDOT Developer are referred to as "Designated TxDOT Compatible Projects."

B. Pursuant to Chapter 361 of the Texas Transportation Code (the "Act") and Sections 27.1-27.5 of Title 43, Texas Administrative Code (the "Rules"), on May 20, 2005, TxDOT issued a Request for Detailed Proposals ("RFDP"), and on July 15, 2005, received two (2) detailed proposals. TxDOT determined that Developer was the proposer which best met the selection criteria contained in the RFDP and that its proposal was the one which provided the best value to the State.

C. The Executive Director of TxDOT has been authorized to enter into this Agreement pursuant to the Act, the Rules and the Texas Transportation Commission Minute Order 110189 dated August 25, 2005.

D. The parties intend for this Agreement to be a comprehensive development agreement obligating Developer to perform all work necessary to obtain completion of the Project (i) complete each Pilot System for the lump sum fixed price specified in the Proposal with respect to such Pilot System (each, a "Pilot System Price"), as the same may be modified pursuant to the procedures specified herein, by the deadlines specified herein with respect to such Pilot System (each a "Pilot System Deadline"), and (ii) complete each Project Segment by the completion deadlines determined in accordance with the procedures specified herein (each a "Project Segment Deadline") for the prices determined in accordance with the procedures specified herein (each, a "Project Segment Price") subject only to certain specified limited exceptions. Developer submitted with its

Proposal lump sum, fixed Pilot System Prices, as set forth on Exhibit U-1, and unit and other prices for each Hypothetical Project Segment described in Exhibit U, to be used as the basis for determining the Project Segment Prices. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of cost overruns, this Agreement includes restrictions affecting Developer's ability to make claims for increases to a Price or extensions of the Completion Deadlines. Developer has agreed in this Agreement to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Pilot System Prices, and in the procedures specified herein for determining the Project Segment Prices.

E. If Developer fails to complete the Project in accordance with the Completion Deadlines set forth in the Contract Documents, then TxDOT and the members of the public represented by TxDOT will suffer substantial losses and damages. The Contract Documents provide that Developer shall pay TxDOT substantial Liquidated Damages if such completion of any Pilot System or Project Segment is delayed.

F. The Agreement provides for TxDOT to authorize development of up to three Pilot Systems upon the issuance of Pilot System NTP 1 and/or subsequent NTPs. The Work for each Project Segment, if any, will be initiated pursuant to a Project Segment Supplement or as otherwise provided in this Agreement, and TxDOT's issuance of additional NTPs for each such Project Segment designated by TxDOT during the Project Segment Designation Period.

G. The Agreement further provides for Developer to maintain the entire System for a price determined on a Project Segment basis in accordance with the procedures specified herein (the "Project Segment Maintenance Price") for a period of up to eight years per Project Segment commencing on Final Acceptance of the applicable Pilot System and/or Project Segment (the "Maintenance Term"). All Maintenance Terms, whether they have run the full eight years or not, shall expire ten years after the date of TxDOT's issuance of Pilot System NTP 1, subject to TxDOT's sole right to extend any Maintenance Term pursuant to five consecutive one-year options on some or all of any individual Project Segment(s) (each a "Maintenance Option Term"); provided, however, that no such extension shall result in a requirement to provide maintenance on a specific Project Segment for a period greater than eight years from Final Acceptance of such Project Segment unless mutually agreed to by the parties. In no event shall the term of this Agreement extend beyond fifteen years after the date of TxDOT's issuance of Pilot System NTP 1. Developer submitted with its Proposal fixed, lump sum Project Segment Maintenance Prices for the Pilot Systems ("Pilot System Maintenance Prices"), as set forth on Exhibit U-3, and unit and other prices for maintenance of each Hypothetical Project Segment Scenario described in Exhibit U-4, to be used as the basis for determining the Project Segment Maintenance Prices in accordance with the procedures provided herein. Any Pilot System that TxDOT directs Developer to develop and maintain as a permanent installation shall, upon Final Acceptance thereof, be considered to be a Project Segment for purposes of determining Developer's post-Final Acceptance and maintenance obligations herein with respect to such permanent installation, and for purposes of determining the Maintenance Price for such Project Segment. In order to allow TxDOT to budget for and finance the Project and to reduce the risk of cost overruns, this Agreement

includes restrictions affecting Developer's ability to make claims for increases to a Project Segment Maintenance Price. Developer has agreed in this Agreement to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Pilot System Maintenance Prices, and in the procedures specified herein for determining the Project Segment Maintenance Prices.

H. The System's accuracy and reliability is of paramount importance to TxDOT's ability to finance and build highways to meet the State's infrastructure needs, and TxDOT will suffer substantial losses and damages if the System does not meet the Performance Requirements. The Contract Documents provide that Developer shall pay TxDOT substantial Stipulated Damages if the System does not meet the Performance Requirements.

NOW, THEREFORE, in consideration of the sums to be paid to Developer by TxDOT, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

## **SECTION 1. CONTRACT COMPONENTS; INTERPRETATION OF CONTRACT DOCUMENTS**

### **1.1 Certain Definitions**

Exhibit A hereto contains the meaning of various terms used in the Contract Documents.

### **1.2 Order of Precedence**

The term "Contract Documents" shall mean the documents listed in this Section 1.2. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

- (a) For design and other non-installation and non-construction Work:
  - 1. Change Orders and Agreement amendments (including amendments to Project Segment Supplements);
  - 2. Project Segment Supplements;
  - 3. Agreement (including all exhibits other than Exhibits B, C and N);
  - 4. Technical Provisions;
  - 5. Attachments to the Technical Provisions;
  - 6. TxDOT Standards (as supplemented and modified by Exhibit B, Amendments, Modifications and Supplements to TxDOT Standard Specifications); and

7. Proposal (including all modifications thereto set forth in Exhibit C).

Notwithstanding the foregoing order of precedence, in the event and to the extent that Exhibit C expressly specifies that it is intended to supersede specific provisions of the Contract Documents, Exhibit C shall control over the specified provisions. In determining whether a conflict exists between the Proposal and other Contract Documents, to the extent that the Proposal can reasonably be interpreted as an offer to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms which TxDOT considers to be more advantageous than the requirements of the other Contract Documents, the Proposal shall not be considered in conflict with the other Contract Documents, and Developer's obligations hereunder shall include compliance with all such statements, offers and terms.

(b) For installation and construction-related standards, specifications and requirements, the order of precedence set forth in clause (a) shall apply, except that the Final Design Documents shall also be considered Contract Documents and shall be added following the Proposal in the order of precedence, provided that (i) specifications contained therein shall have precedence over plans, and (ii) no conflict shall be deemed to exist between the Final Design Documents and the other Contract Documents with respect to requirements of the Final Design Documents that TxDOT determines are more beneficial than the requirements of the other Contract Documents; and (iii) any other Deviations contained in the Final Design Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified in the approval.

(c) Portions of the Reference Documents are referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. The referenced information shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the Contract Document in which the reference occurs.

(d) Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.2, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, TxDOT shall have the right to determine, in its sole discretion, which provision applies regardless of the order of precedence of the documents in which such standards are referenced. Developer shall request in writing TxDOT's determination respecting the order of precedence involving the referenced standards promptly upon becoming aware of any such conflict.

### 1.3 Interpretation of Contract Documents

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Codes are to the codified laws of the State; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Agreement; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. Developer acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the terms and conditions of the Contract Documents (including those Reference Documents that are referenced in the Contract Documents, and pursuant to Section 1.2(c) above, are considered Contract Documents) and to bring to the attention of TxDOT any conflicts or ambiguities contained therein. Developer further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, if an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person which prepared them, and, instead, other rules of interpretation and construction shall be used. TxDOT's interim or final answers to the questions posed during the Proposal process for this Agreement shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except to the extent they may clarify provisions otherwise considered ambiguous. On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

### 1.4 Referenced Standards and Specifications

**1.4.1** Except as otherwise specified in the Contract Documents or otherwise directed by TxDOT, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Proposal Date.

**1.4.2** In interpreting referenced standards, the following apply:

- (a) References to the project owner shall mean TxDOT.



(b) References to the Engineer in the context of provider of compliance judgment may mean the Engineering Professional Services Quality Review Manager, it may mean the Toll Systems Services Quality Control Manager, or it may mean a TxDOT representative, depending on the context, as determined by TxDOT in its sole discretion.

(c) References to "plan(s)" shall mean the Final Design Documents.

(d) Cross-references to measurement and payment provisions contained in the referenced standard shall be deemed to refer to the measurement and payment provisions contained in the Contract Documents.

### **1.5 Explanations; Omissions and Misdescriptions**

Developer shall not take advantage of or benefit from any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Developer shall request in writing such further written explanations from TxDOT as may be necessary and shall comply with the explanation provided. Developer shall promptly notify TxDOT in writing of all Errors which it may discover in the Contract Documents (including those Reference Documents that are referenced in the Contract Documents, and pursuant to Section 1.2 (c) above, are considered Contract Documents), and shall obtain specific instructions in writing from TxDOT regarding any such Error before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Developer from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

### **1.6 Computation of Periods**

References to "Days" contained in the Contract Documents shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice "within" a specified time period) falls on a non-business day, such act or notice may be timely performed on the next succeeding day which is a business day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a non-business day. The term "business days" shall mean Days on which TxDOT is officially open for business.

### **1.7 Standard for Approvals**

In all cases where approvals or consents are required to be provided by TxDOT or Developer hereunder, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases

where sole discretion is specified the decision shall not be subject to dispute resolution hereunder.

## **1.8 Engineering Professional Services Licensing Requirements**

TxDOT does not intend to contract for, pay for, or receive any Engineering Professional Services which are in violation of any professional licensing or registration laws, and by execution of this Agreement, Developer acknowledges that TxDOT has no such intent. It is the intent of the parties that Developer is fully responsible for furnishing the Engineering Professional Services of the Project through itself and/or subcontracts with licensed/registered Engineering Professional Service firm(s) as provided herein. Any references in the Contract Documents to Developer's responsibilities or obligations to "perform" the Engineering Professional Services portions of the Work shall be deemed to mean that Developer shall "furnish" the Engineering Professional Services for the Project. The terms and provisions of this Section 1.8 shall control and supersede every other provision of all Contract Documents.

## **1.9 Federal Requirements**

The Work to be performed under this Agreement will be financed in part with federal funds and is, therefore, subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the federal requirements set forth in Exhibit D. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

## **SECTION 2. OBLIGATIONS OF DEVELOPER; REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **2.1 Performance Requirements**

#### **2.1.1 Performance of Work; Project Segment Supplements; Project Management Plan**

**2.1.1.1** The Work shall include the design, construction, installation, integration, fabrication, assembly, testing, verification and maintenance of each Pilot System and Project Segment, in conformance with the Technical Provisions, the Basic Configuration and the Owner Design Documents (to the extent available and appropriate), and otherwise complying with the requirements of the Contract Documents. All materials, services and efforts necessary to achieve System Acceptance, Punch List Acceptance and Final Acceptance of the Pilot System(s) and each Project Segment on or before the applicable Completion Deadlines shall be Developer's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 13, the costs of all Work, including such materials, services and efforts (i) with respect to the Pilot System(s), are included in the Pilot System Prices and Pilot System Maintenance Prices; and (ii) with respect to each Project Segment, will be included in each Project Segment Price and each Project Segment Maintenance Price.

**2.1.1.2** Developer shall perform the Work for all Project Segments designated by TxDOT during the Project Segment Designation Period based upon executed Project Segment Supplements (or as otherwise provided in this Agreement) and upon issuance of the applicable NTPs; provided, however, that TxDOT may, in its sole discretion, change a Pilot System, in which case the Project Segment Supplement process described herein shall apply and such changed or alternative Pilot System shall be considered a Project Segment hereunder. TxDOT shall designate a Project Segment by submission of a draft Project Segment Supplement to Developer in the form of Exhibit P. Project Segment Supplements issued by TxDOT shall describe the Project Segment Basic Configuration, and shall contain TxDOT's proposed Project Segment Price, Project Segment Completion Deadlines, Project Segment Maintenance Price, Liquidated Damages amounts, Key Personnel designations applicable to the Project Segment, , TxDOT-Provided Approvals applicable to the Project Segment, and any necessary Project Segment-specific modifications to the Contract Documents. Stipulated Damage amounts applicable to each Project Segment shall be as set forth in Section 17.4. TxDOT will determine these items based upon the Pilot System Prices, the Hypothetical Project Segment Scenario Prices, the Hypothetical Project Segment Scenario schedule requirements set forth in Exhibit U-6, the Pilot System Maintenance Prices, the Hypothetical Project Segment Scenario Maintenance Prices, the Hypothetical Project Segment Scenario methodologies for determining Liquidated Damages set forth in Exhibit U-5, the EPDs, other materials submitted by Developer with its Proposal and any Project Segment-specific modifications to the Contract Documents. Developer shall have 10 Days to review each draft Project Segment Supplement and either accept the terms proposed by TxDOT or provide Developer's counter-proposal. If Developer does not have sufficient

information to respond to TxDOT's draft Project Segment Supplement within such 10 Days period, Developer shall, within 10 Days of receipt of the draft Project Segment Supplement, provide TxDOT with written notice setting forth Developer's proposed detailed schedule for developing and providing such response, and a list detailing additional information Developer requires in order to provide such response. Additional information that Developer requests must be in the possession of TxDOT or readily available to it. All deviations from TxDOT's draft Project Segment Supplement must be clearly identified in Developer's counter-proposal and justified. If Developer does not accept the terms proposed by TxDOT, the parties shall endeavor in good faith to negotiate the Project Segment Price, the Project Segment Maintenance Price, the Project Segment Completion Deadlines, the Project Segment Liquidated Damages, any Project Segment-specific modifications to the Contract Documents and any other relevant terms and conditions. Upon mutual agreement on the terms of the Project Segment Supplement for a Project Segment, the parties shall execute the same and it shall become a part of this Agreement. At any time, TxDOT may, in its sole discretion, (i) direct Developer to proceed with the Project Segment Work, and refer the determination of the Project Segment Price, Project Segment Completion Deadlines, Project Segment Maintenance Price and/or Project Segment Liquidated Damages to dispute resolution pursuant to Section 19 (in which case, Developer shall promptly provide all required documents and instruments set forth in Section 2.2 and otherwise satisfy the prerequisites to issuance of an NTP set forth in this Agreement and, upon issuance of the NTP, perform such Work in accordance with the requirements of the Contract Documents), (ii) direct Developer to proceed with the Work in accordance with the Project Segment Schedule provided by Developer on a time and materials basis pursuant to Section 13.7 (in which case, Developer shall promptly provide all required documents and instruments set forth in Section 2.2 and otherwise satisfy the prerequisites to issuance of an NTP set forth in this Agreement and, upon issuance of the NTP, perform such Work in accordance with the requirements of the Contract Documents), or (iii) terminate the negotiations and procure the Project Segment Work from another party. Nothing contained herein shall limit or modify TxDOT's unilateral right, in its sole discretion, to procure or seek other alternatives to issuing the Project Segment Supplements to Developer or having other contractors or developers perform such Work. If TxDOT proceeds under clause (i) of this Section 2.1.1.2, the determination of the item(s) with which the parties have been unable to agree shall be made by the party resolving the dispute using the information, items, materials, principles, guidelines and methodologies described herein. Developer acknowledges and agrees that it has no contractual or other right to receive any Project Segment Supplements or undertake any Pilot System or Project Segment Work for which an NTP has not been issued, including no right of first negotiation or first refusal or other similar right or interest. TxDOT shall not be required to commence or continue any negotiations of a Project Segment Supplement and may decide to use another party for such Work as and when it determines, in its sole discretion.

**2.1.1.3** The draft Project Segment Supplement shall describe in reasonable detail TxDOT's estimated (i) Project Segment Price, (ii) Project Segment Completion Deadlines; and (iii) Project Segment Maintenance Price. Any revisions to pricing that Developer proposes must be based upon differences between, on the one hand, the original assumptions and Contract Document requirements with respect to the

Pilot System Prices, the Pilot System Maintenance Prices, the Hypothetical Project Segment Scenario Prices, the Hypothetical Project Segment Scenario Maintenance Prices, and, on the other hand, the Project Segment. For example, material differences in required quantities or labor needs that affect the Developer's purchasing power may justify a change in a price to reflect the additional quantities or labor needs, but (a) time periods or gaps between issuance of NTPs for Pilot Systems and/or Project Segments; (b) changes in market conditions, (c) changes in Developer's financial condition or organizational structure, (d) outcomes or conditions experienced on prior Pilot Systems or Project Segments that may increase Developer's cost of performing the Work, such as incurring Liquidated Damages or Stipulated Damages, draws against a letter of credit, or claims on a bond or insurance policy, or (e) any other circumstance not directly resulting from material differences in the size, location, site conditions or character between the proposed Project Segment and the Pilot Systems and Hypothetical Project Segment Scenarios, would not justify a change in a price, except to the limited extent as set forth in Section 12.1.4 or Section 12.1.5. Any proposed pricing revision to TxDOT's draft Project Segment Supplement must be developed using the same estimating, cost, schedule, risk assessment, overhead and profit principles used in connection with the development of the Proposal, the Pilot System Prices, the Pilot System Maintenance Prices and the Hypothetical Project Segment Scenario Prices, it being the express intent of Developer and TxDOT to determine the prices for a Project Segment on this basis. TxDOT shall have the right to review Developer's back-up for its quantities, labor and work effort estimates, as well as the EPDs and other materials submitted by Developer with its Proposal, during the course of any Project Segment Price negotiations. The negotiations shall be conducted on an "open-book" basis, i.e., Developer will disclose the basis for determining its Project Segment Price and Project Segment Maintenance Price, including assumptions as to schedule, labor needs and rates, quantities, equipment needs and rates, material costs, productivity, design and productivity allowances, contingency, bonding and insurance costs, risk ratings and premiums, indirects, overhead, profit, and other items reasonably required by TxDOT to satisfy itself as to the reasonableness of the negotiated Project Segment Price and Project Segment Maintenance Price. The lump sum prices and unit prices shall be adjusted to account for changes in the cost items that were the basis for determining such initial amounts as set forth in Section 12.1.4 or Section 12.1.5. Any revisions to schedule that Developer proposes must be based upon differences between the original assumptions with respect to the Hypothetical Project Segment Scenarios upon which the Exhibit U-6 schedules were established, and the Project Segment; provided, however, that, except where the Completion Deadlines set forth in the draft Project Segment Supplement are not feasible, TxDOT reserves the right to address Developer's proposed schedule through modification of pricing rather than through schedule adjustment.

**2.1.1.4** Notwithstanding Section 2.1.1.2, TxDOT shall not require simultaneous Work necessary to achieve System Acceptance of Project Segments aggregating more than 200 tolled lanes or 20 Project Segments in addition to the tolled lanes comprising the Pilot Systems at any given point in time without Developer's prior written consent, which consent shall not be unreasonably withheld or delayed.

**2.1.1.5** Developer shall maintain each Pilot System and Project Segment in accordance with the requirements of the Contract Documents during the Maintenance Term. TxDOT shall have the option to extend the Maintenance Term for any Project Segment as provided in this Section 2.1.1.5. If directed by TxDOT, in its sole discretion, Developer shall continuously maintain any Project Segment designated by TxDOT for up to five consecutive one-year periods after the expiration of the initial Maintenance Term; provided, however, that no such extension shall result in a requirement to provide maintenance on a specific Project Segment for a period greater than eight years from Final Acceptance of such Project Segment unless mutually agreed to by the parties. TxDOT may exercise its extension options with respect to any and all of the Project Segments then being maintained by Developer. TxDOT shall notify Developer in writing of TxDOT's desire to exercise an extension option to extend Developer's obligation to maintain any portion of the Project for an additional one-year period not fewer than 60 Days prior to expiration of the then current Maintenance Term (as the same may have been ~~previously extended~~ by TxDOT). The Project Segment Maintenance Prices to be paid by TxDOT during any extension period shall be determined in accordance with Section 12.1.3.3.

**2.1.1.6** Developer shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all parties who are directly impacted by the Work. Developer shall document and report all Work in accordance with the requirements set forth herein and in the approved Project Management Plan described in TP Section 1.2.1. Developer shall submit the Project Management Plan for each Pilot System and Project Segment to TxDOT for approval within 30 Days after the issuance of the relevant NTP.

## **2.1.2 Performance Standards**

Developer shall furnish the design of the Project and shall install and construct the Project as designed, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, free from defects (except with respect to Software or to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents.

## **2.1.3 Changes in Basic Configuration**

**2.1.3.1** Where Owner Design Documents are provided by TxDOT for a Pilot System or a Project Segment, if, as the result of an Error in the Owner Design Documents, it becomes apparent that such Basic Configuration must be materially modified, such modification shall be considered a Necessary Basic Configuration Change and shall be eligible for a Change Order as provided in Section 13.8.

**2.1.3.2** If a VE results in a change in a Basic Configuration, any cost savings from such VE shall be shared in accordance with Section 22.

**2.1.3.3** Developer shall not make any change in a Basic Configuration except as approved by TxDOT and authorized by a Change Order in accordance with Section 13, and subject to the limitations contained in Section 6.4. A Change Order is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on Developer's costs or schedule.

**2.1.3.4** Except for a TxDOT-Directed Change (including a Necessary Basic Configuration Change) that does not fall within Developer's responsibilities under Section 13.2.3 or involving a delay to a Critical Path, any changes in a Basic Configuration shall be the responsibility of Developer.

## **2.2 Prerequisites to Issuance of Pilot System NTP 1 and Subsequent Pilot System NTPs or Project Segment NTPs**

Following Pilot System NTP 1, TxDOT shall not issue an NTP for Developer to proceed with the Work for a subsequent Pilot System, or Work that is the subject of any Project Segment Supplement, unless and until TxDOT and Developer have executed a Project Segment Supplement for such Work (or TxDOT directs that Work for such Project Segment proceed pending resolution of a dispute concerning the Project Segment Supplement, as described in Section 2.1.1.2). In addition to the foregoing, TxDOT shall not issue an NTP (including Pilot System NTP 1) unless and until the following requirements for the applicable Pilot System or Project Segment have been satisfied:

(a) Developer shall have delivered to TxDOT the applicable Pilot System Performance Bond, Project Segment Performance Bond or Rider required pursuant to Section 8.1.1;

(b) Developer shall have delivered to TxDOT the applicable Pilot System Payment Bond, Project Segment Payment Bond or Rider required pursuant to Section 8.1.2;

(c) Developer shall have delivered to TxDOT the applicable letter of credit or amendment thereto required pursuant to Section 8.2;

(d) Developer shall have delivered to TxDOT any Guaranty of Developer's obligations pursuant to the Contract Documents and/or Project Segment Supplement that may be required with respect to a Pilot System or Project Segment, respectively;

(e) Developer shall have provided to TxDOT the insurance policies, certificates of insurance, riders to its existing insurance policies or other evidence reasonably required by TxDOT to confirm the existence of all the insurance coverages required pursuant to Section 9;

(f) TxDOT shall have approved any changes to the Key Personnel for such Pilot System or Project Segment pursuant to Section 7.4.5;



(g) Developer has submitted all EPDs used in connection with the Pilot System or Project Segment Supplement, Developer and TxDOT shall have jointly reviewed and indexed the same as set forth in Section 21.1 and such EPDs are in form and substance satisfactory to TxDOT;

(h) Developer shall have provided Forms H-1 through H-5 of the Instructions to Proposers with respect to the Pilot System or Project Segment in form and substance satisfactory to TxDOT;

(i) TxDOT shall have obtained all Environmental Approvals required under NEPA for such Pilot System or Project Segment, including a ROD or FONSI, as applicable;

(j) The Source Code Escrow shall be in place pursuant to Section 21.8.4 and shall be in full force and effect; and

(k) Developer shall have provided to TxDOT any other documents, things or assurances reasonably required by the Contract Document or an executed Project Segment Supplement or otherwise by TxDOT in connection with such Pilot System or Project Segment.

Developer acknowledges that no Pilot System or Project Segment will be implemented or be the subject of an NTP unless and until all required environmental approvals have been obtained and nothing contained in the Contract Documents shall (i) limit, modify or otherwise discharge TxDOT or the Developer from their respective obligations under any applicable Environmental Law, including NEPA; or (ii) commit TxDOT to issue an NTP for any Pilot System or Project Segment in advance of obtaining all required Environmental Approvals. Developer acknowledges that selection of a "no-build" alternative with respect to any and all Pilot Systems and Project Segments may result from any environmental assessment undertaken by TxDOT.

### **2.3 General Obligations of Developer**

Developer, in addition to performing all other requirements of the Contract Documents, shall:

**2.3.1** Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents expressly specify will be undertaken by TxDOT or other Persons) (a) to construct, fabricate, assemble, install and integrate the Project and maintain it during installation and construction in accordance with the requirements of the Contract Documents, the applicable Project Schedule (including all Project Segment Schedules), all Laws, all Governmental Approvals, the approved Engineering Professional Services Quality Program, the approved Civil Construction Quality Program, the approved Toll Systems Services Quality Program, the Construction Documents and all other applicable safety, environmental and other requirements, taking into account the applicable ROW limits and other constraints affecting the Project, so as to



achieve each System Acceptance, Punch List Acceptance and each Final Acceptance by the applicable Completion Deadlines, and (b) otherwise to do everything required by and in accordance with the Contract Documents. Except as otherwise approved by TxDOT in writing, Developer shall use the equipment set forth in the Equipment Identification List attached hereto as Exhibit R with respect to each of the Pilot Systems and Project Segments.

**2.3.2** At all times provide a Project Manager approved by TxDOT who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Developer, (c) will be present (or its approved designee will be present) at the Project Site at all times that Work is performed, and (d) will be available to execute instructions and directions from TxDOT or its authorized representatives.

**2.3.3** Use the Engineering Professional Services firm or firms, the Toll Systems Services firm or firms and other Subcontractors identified in the Proposal to perform the Engineering Professional Services, Toll Systems Services and other services, as applicable, required by the Contract Documents (or other firms approved in writing by TxDOT, which approval shall not be withheld provided that Developer has demonstrated to TxDOT's satisfaction that such firm has the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required services, and that the designated key personnel at such firm have sufficient experience in the requirements applicable to the Project). Developer shall not shift Engineering Professional Services Work or Toll Systems Services Work from one firm to another without the prior written approval of TxDOT.

**2.3.4** Obtain all Governmental Approvals required in connection with the Project (excluding the TxDOT-Provided Approvals shown in Exhibit E, and certain New Environmental Approvals as provided in Section 6.4.2); and prior to beginning any construction activities in the field, furnish TxDOT with fully executed copies of all Governmental Approvals (other than the Governmental Approvals obtained by TxDOT) required for such portion of the Project.

**2.3.5** Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of all environmental mitigation measures required by the Contract Documents, except to the extent that responsibility for performance of such measures is expressly assigned to another Person in the Contract Documents.

**2.3.6** Provide such assistance as is reasonably requested by TxDOT in dealing with any Governmental Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. This provision is not intended to require Developer to provide legal services for the benefit of TxDOT.

**2.3.7** Comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Laws, including Environmental Laws, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), including any amendments, and the federal requirements set forth in Exhibit D.

**2.3.8** Cooperate with TxDOT, the Project Management Consultant, TxDOT's other consultants, and Governmental Persons with jurisdiction over the Project in review and oversight of the design of the Project, performing oversight and conducting inspections during the construction, installation, testing, integration and verification of the Project and other matters relating to the Work.

**2.3.9** Pay, prior to delinquency, all applicable federal, State and local sales, excise, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Person, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work. Developer acknowledges that it is exempt from paying sales tax on Expendable Materials purchases within the State. If materials purchased for the Work are not wholly used or expended on the Project, Developer shall be responsible for applicable sales taxes. In connection with any such exemption or request for (or claim of) exemption, Developer shall be solely responsible for timely submitting any filings or other statements required by Applicable Law (including those required by the Comptroller of the State).

**2.3.10** Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by resequencing, reallocating, or redeploying Developer's forces to other work, as appropriate.

## **2.4 Representations, Warranties and Covenants**

Developer represents, warrants and covenants that:

**2.4.1** Developer and its Engineering Professional Services Subcontractor(s) have, and throughout the term of this Agreement shall maintain, all required authority, license status, professional ability, skills and capacity to perform the Engineering Professional Services Work, and shall perform it in accordance with the requirements contained in the Contract Documents.

**2.4.2** Developer and its Toll Systems Services Subcontractor(s) have, and throughout the term of this Agreement shall maintain, all required professional ability, skills and capacity to perform the Toll Systems Services Work, and shall perform it in accordance with the requirements contained in the Contract Documents.

**2.4.3** Developer has evaluated the known constraints affecting the Work associated with each Pilot System, and has reasonable grounds for believing and does believe that the Work associated with each Pilot System can be performed in accordance with the Contract Documents and within such constraints.

**2.4.4** Developer has evaluated the feasibility of performing the Work to develop and maintain each Pilot System within the applicable Pilot Completion Deadlines and for the applicable Pilot System Prices and Pilot System Maintenance Prices, accounting for constraints affecting the applicable Pilot Systems, and has reasonable grounds for believing and does believe that such performance (including achievement of the applicable Pilot System Acceptance, the applicable Pilot System Punch List Acceptance and the applicable Pilot System Final Acceptance by the applicable Pilot Completion Deadlines and performance of the maintenance Work during the applicable Maintenance Term) is feasible and practicable. Developer has evaluated the procedures specified herein with respect to determining the Project Segment Prices, Project Segment Completion Deadlines, Project Segment Liquidated Damages and Project Segment Stipulated Damages, and has reasonable grounds for believing, and does believe, that completion of Project Segments for the Project Segment Price(s) and within the Project Segment Completion Deadline(s) that will be determined based upon such procedures will be feasible and practicable, accounting for constraints affecting the applicable Project Segments, and the Project Segment Liquidated Damages and Project Segment Stipulated Damages determined based upon such procedures will be reasonable. Developer has evaluated the procedures specified herein with respect to determining the Project Segment Maintenance Prices and has reasonable grounds for believing, and does believe, that such procedures will be feasible and practicable, accounting for constraints affecting the Project. Developer further acknowledges and agrees that if TxDOT designates an additional or different project to be a Pilot System other than those that are identified in the Technical Provisions, such Pilot System will be treated as a Project Segment for purposes of this Section 2.4.4 and the parties will pursue a Project Segment Supplement in accordance with Sections 2.1.1.2-2.1.1.3 above with respect to such redesignated Pilot System.

**2.4.5** Developer will, in accordance with prudent and generally accepted engineering practices and prior to establishing or agreeing to any Project Segment Price(s), Project Segment Maintenance Prices and Project Segment Completion Deadline(s) (i) review any geotechnical information, utility surveys and information, design information, traffic and revenue studies and reports, hazardous materials surveys, right-of-way maps and other Project Segment-related information provided by TxDOT, (ii) take appropriate steps to verify any such Project Segment information provided by TxDOT, (iii) examine the Project Site and surrounding locations, (iv) perform appropriate field studies, and (v) undertake other activities sufficient to familiarize itself with existing Utilities, surface conditions and subsurface conditions potentially affecting such Project Segment to the extent Developer deems necessary or advisable for performing its obligations under the Contract Documents with respect to such Project Segment. Developer shall be deemed to have acknowledged and agreed that it has been afforded the opportunity to review the information and documents made available to it by TxDOT with respect to such future Project Site(s), and to the extent access is made available by TxDOT to conduct inspections and tests of the Project Site(s) and surrounding locations. Before commencing any work on a particular portion or aspect of the Project, Developer shall verify all governing dimensions of the relevant Project Site and shall examine all adjoining work which may have an impact on such Work. Developer shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining

dimensions. In the event that TxDOT designates an additional or different project to be a Pilot System other than those that are identified in the Technical Provisions, such Pilot System will be treated as a Project Segment for purposes of this Section 2.4.5.

**2.4.6** Developer acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Agreement. Developer shall be deemed to have familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals for any Project Segment prior to entering into any Project Segment Supplement or performing any Work related thereto. Except as specifically permitted under Section 13, Developer shall be responsible for complying with the foregoing at its sole cost and without any increase in any Price or extension of any Completion Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, ~~equipment and/or materials not expressly provided for in the Contract Documents~~. Developer has no reason to believe that any Governmental Approval required to be obtained by Developer with respect to any Pilot System or Project Segment will not be granted in due course and, thereafter, remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any Governmental Approvals required to be obtained by Developer with respect to a Pilot System and/or Project Segment must formally be issued in the name of TxDOT, Developer shall undertake all efforts to obtain such approvals subject to TxDOT's reasonable cooperation with Developer, including execution and delivery of appropriate applications and other Documentation prepared by Developer in form approved by TxDOT. Developer shall assist TxDOT in obtaining any Government Approvals which TxDOT may be obligated to obtain, including providing information requested by TxDOT, preparing necessary supporting materials and participating in meetings regarding such approvals. In the event that TxDOT designates an additional or different project to be a Pilot System other than those that are identified in the Technical Provisions, such Pilot System will be treated as a Project Segment for purposes of this Section 2.4.6.

**2.4.7** All civil design and engineering Work furnished by Developer shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State. All design and engineering Work furnished by Developer shall be performed by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared or checked by them.

**2.4.8** Developer shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve, as applicable, each Pilot System Acceptance, Pilot System Punch List Acceptance, Pilot System Final Acceptance, Project Segment System Acceptance, Project Segment Punch List Acceptance and Project Segment Final Acceptance by the applicable Completion Deadlines and in accordance with the applicable approved Project Schedules, including furnishing such employees, materials, facilities and

equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as are permitted by the Contract Documents and which may be necessary to achieve such goal, all at Developer's sole cost, except as otherwise specifically provided in Section 13.

**2.4.9** With respect to Software, (a) except as provided in Section 21.8.1 hereof with respect to certain identified and preexisting works licensed to TxDOT, Developer and its Subcontractors are and will be the sole author of all works employed by Developer in preparing any and all Software, (b) Developer has and will have sufficient right to assign or grant the rights and/or licenses granted in the Software pursuant to this Agreement (and Developer acknowledges that all Software that is developed in whole or in part for toll collection shall be covered by the licensing requirements of Section 21.8.1), (c) all Software, except any preexisting works addressed in Section 21.8.1 hereof, have not been and will not be used or published under circumstances which have caused or will cause a loss of copyright, patent rights, trademark or other intellectual property right therein, and (d) all Software, including all preexisting works addressed in Section 21.8.1 hereof, do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor is any claim (whether or not embodied in an action, past or present) of such infringement pending, been asserted or, to the best of Developer's knowledge, been threatened against Developer (or, insofar as Developer is aware, any entity from which Developer has obtained such rights). The representations and warranties set forth in this Section 2.4.9 shall survive the Maintenance Term (including any Maintenance Options) and shall survive the expiration or termination of this Agreement.

**2.4.10** Developer is a corporation duly organized and validly existing under the laws of the State of Delaware, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. Developer is duly qualified to do business, and is in good standing, in the State, and will remain in good standing throughout the term of this Agreement and for as long thereafter as any obligations remain outstanding under the Contract Documents.

**2.4.11** The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action of Developer, and this Agreement has been duly executed and delivered by Developer.

**2.4.12** All required approvals have been obtained with respect to the execution, delivery and performance of this Agreement, and performance of this Agreement will not result in a breach of or a default under Developer's organizational documents or any indenture or loan or credit agreement or other material agreement, instrument, judgment or decree to which Developer is a party or by which its properties and assets may be bound or affected.

**2.4.13** This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each member of Developer, in accordance with its terms.

**2.4.14** All customer information and data to which Developer may have access or which Developer may obtain in connection with performance of the Work hereunder, and other Project information generated in connection with this Agreement, is and shall be the sole property of TxDOT. Developer shall at all times maintain the strict confidentiality of such information. Developer shall have no right to sell, transfer, disclose or otherwise use such information for any purpose other than in performance of its duties hereunder. Developer acknowledges and agrees that privacy of the customers is of paramount importance to TxDOT and the traveling public and that Developer will comply with all applicable Laws concerning privacy and confidentiality of personal information obtained in the course of the Work performed under this Agreement.

## **2.5 Performance as Directed**

At all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Developer shall perform as and if directed by TxDOT in a diligent manner and without delay, shall abide by TxDOT's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 19.

## **SECTION 3. DESIGN REQUIREMENTS; DISCLAIMER; ROLES OF PROJECT MANAGEMENT CONSULTANT AND FHWA**

### **3.1 Design Requirements**

#### **3.1.1 Design Review Process and Compliance with Final Design Documents**

**3.1.1.1** Developer shall furnish the Design Documents to TxDOT in accordance with the design review submittal and certification process set forth in TP Sections 2 and 4.

**3.1.1.2** Developer shall respond to the comments provided by TxDOT and make modifications to the Design Documents based on such comments in accordance with TP Sections 2.2.4 and 2.2.5. Developer acknowledges that comments may be provided which reflect concerns regarding operability or preferences of the commenter or which otherwise do not directly relate to specific requirements of the Contract Documents. Developer agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments through the review process described in TP Section 2.2.4.4 and 2.4.3. The foregoing shall in no way be deemed to obligate Developer to incorporate any comments that would result in a significant disruption to its schedule or a significant increase in its costs, except pursuant to a TxDOT-Directed Change.

**3.1.1.3** Developer shall construct, fabricate, assemble, provide, install, integrate, test and verify all aspects of each Pilot System and Project Segment in accordance with their respective Final Design Documents and Construction Documents. The Final Design Documents may be changed only with prior written approval of TxDOT in its sole discretion. Developer may make minor modifications to the Construction Documents without prior written approval of TxDOT, but must deliver the modifications to TxDOT in advance of performance of the Work.

### **3.2 Responsibility for Design**

#### **3.2.1 Developer Responsibility**

Developer agrees that it has full responsibility for the design of the Project and that Developer will furnish the design of the Project, regardless of the fact that with respect to certain Pilot Systems or Project Segments, Owner Design Documents, including, in certain circumstances, a Schematic Design, may be provided to Developer as a preliminary basis for Developer's design. Developer specifically acknowledges and agrees that:

(a) Developer is not entitled to rely on (i) any Owner Design Documents except as specified in Section 3.2.2, (ii) the Reference Documents, or (iii) any other documents or information provided by TxDOT, except to the extent specifically permitted in the Contract Documents.



(b) Developer is responsible for correcting any Errors in the Owner Design Documents through the design and/or construction process without any increase in any Price or extension of a Completion Deadline for the relevant Work, subject only to the right to a Change Order with respect to any Necessary Basic Configuration Changes to the extent permitted by Section 13.8.

(c) TxDOT's liability for Errors in any Owner Design Documents is limited to its obligations relating to Necessary Basic Configuration Changes, and is subject to the requirements and limitations of Section 13.

(d) Developer's warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the Owner Design Documents.

(e) Developer is responsible for verifying all technical information contained in the RFDP Documents or otherwise provided by TxDOT with respect to a Pilot System or Project Segment.

### **3.2.2 Owner Design Documents**

**3.2.2.1** Developer acknowledges and agrees that if Developer wishes to deviate from the Schematic ROW contained in any Owner Design Documents, it must specifically identify such Deviations in writing to TxDOT, provide justification for the modification, and obtain specific written approval from TxDOT, in its sole discretion, prior to use of such modifications. Developer must obtain TxDOT's prior written approval to deviate from any Owner Design Documents unless the proposed Deviation (i) is within the Schematic ROW and requires no additional right-of-way; (ii) meets the requirements of the Technical Provisions; (iii) requires no New Environmental Approval; and (iv) does not constitute a Design Exception or Design Waiver. Developer acknowledges and agrees that the requirements and constraints set forth in the Contract Documents and in the Governmental Approvals, as well as Project Site conditions, will impact Developer's ability to revise the concepts contained in any Owner Design Documents, in addition to the requirement to obtain approval.

**3.2.2.2** Developer may rely on the Basic Configuration elements as shown on any Owner Design Documents as representing a feasible design solution for the Project and that it is feasible to develop the Project within the Schematic ROW limits identified in the Owner Design Documents, and shall have the right to obtain a Change Order for Necessary Basic Configuration Changes as provided in Section 13.

**3.2.2.3** Developer acknowledges that any Owner Design Documents are preliminary and subject to refinement through the Final Design process, and that Developer's entitlement to an increase in a Price or time extension in connection with any changes in Owner Design Documents is limited to Necessary Basic Configuration Changes.



### **3.3 Disclaimer**

**3.3.1** Developer understands and agrees that TxDOT shall not be responsible or liable in any respect for any Losses whatsoever suffered by any Developer-Related Entity by reason of any use of any information contained in any Owner Design Documents or Reference Documents, or any action or forbearance in reliance thereon, except to the extent that TxDOT has specifically agreed in Section 13 that Developer shall be entitled to an increase in a Price and/or extension of a Completion Deadline with respect to such matter. Developer further acknowledges and agrees that (a) if and to the extent Developer or anyone on Developer's behalf uses any of said information in any way, such use is made on the basis that Developer, not TxDOT, has approved and is responsible for said information, and (b) Developer is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at Developer's own risk and at its own discretion.

**3.3.2** SUBJECT TO SECTION 3.2.2, TxDOT DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN ANY OWNER DESIGN DOCUMENTS OR REFERENCE DOCUMENTS IS, OR WILL BE, EITHER COMPLETE OR ACCURATE (INCLUDING WITH RESPECT TO (i) HEIGHTS, LENGTHS OR SIZES DEPICTED IN THE OWNER DESIGN DOCUMENTS, (ii) HEIGHTS, LENGTHS OR SIZES OF STRUCTURES OR WALLS DEPICTED IN THE OWNER DESIGN DOCUMENTS, OR (iii) ANY FAILURE OR OMISSION TO DEPICT ANY OF THE FOREGOING IN THE OWNER DESIGN DOCUMENTS) OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF TxDOT-PROVIDED APPROVALS OR OTHER CONTRACT DOCUMENTS. TxDOT DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE TECHNICAL PROVISIONS. THE FOREGOING SHALL IN NO WAY AFFECT TxDOT's LIABILITY FOR NECESSARY BASIC CONFIGURATION CHANGES AS SPECIFIED HEREIN OR TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

### **3.4 Role of Program Manager**

Carter & Burgess has been designated as TxDOT's Project Management Consultant. The Project Management Consultant will assist TxDOT in the management and oversight of the Project and the Agreement. TxDOT may change the designation of its Project Management Consultant at any time.

### **3.5 Role of FHWA**

Developer acknowledges and agrees that FHWA will have certain approval rights with respect to the Project (including rights to approve the Project design and certain Change Orders), as well as the right to provide certain oversight and technical services with respect to the Project.

## **SECTION 4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS**

### **4.1 Time of Essence; Notice to Proceed**

#### **4.1.1 Time is of the essence of this Agreement.**

**4.1.2** Authorization allowing Developer to proceed with Work hereunder shall be provided through sequentially numbered Notices to Proceed issued by TxDOT for each Pilot System ("Pilot System NTP 1" et. seq.) and for each Project Segment ("Project Segment NTP 1" et seq.).

### **4.2 Completion Deadlines**

#### **4.2.1 System Acceptance Deadline**

Developer shall achieve the Pilot System Acceptance for each Pilot System on or before the number of Days after the effective date of the relevant Pilot System NTP set forth in the Pilot System Schedule in Exhibit U-6, and Project Segment System Acceptance of each Project Segment on or before expiration of the number of Days specified in the relevant Project Segment Supplement for such Project Segment. Said date(s) for achieving System Acceptance, as it or they may be extended hereunder, is/are each referred to herein as a Pilot or Project Segment "System Acceptance Deadline."

#### **4.2.2 Punch List Acceptance Deadline**

Developer shall achieve Pilot System Punch List Acceptance of each Pilot System on or before 30 Days after Pilot System Acceptance of such Pilot System. Developer shall achieve Project Segment Punch List Acceptance of each Project Segment on or before 30 Days after Project Segment System Acceptance of such Project Segment. Each such deadline for achieving Punch List Acceptance, as it may be extended hereunder, is referred to herein as a Pilot System or Project Segment "Punch List Acceptance Deadline."

#### **4.2.3 Final Acceptance Deadline**

Developer shall achieve Pilot System Final Acceptance of each Pilot System on or before 120 Days after Pilot System Acceptance of such Pilot System. Developer shall achieve Project Segment Final Acceptance of each Project Segment within 120 Days after Project Segment System Acceptance of such Project Segment. Each such deadline for achieving Final Acceptance, as it may be extended hereunder, is referred to herein as a Pilot System or Project Segment "Final Acceptance Deadline."

#### **4.2.4 No Time Extensions**

Except as otherwise specifically provided in Section 13, TxDOT shall have no obligation to extend a Completion Deadline and Developer shall not be relieved of its obligation to comply with the Project Schedule and to achieve System Acceptance, Punch

List Acceptance and Final Acceptance of each Pilot System and Project Segment by the applicable Completion Deadlines for any reason.

### **4.3 Scheduling of Design, Construction and Payment**

#### **4.3.1 Project Schedule**

##### **4.3.1.1 Pilot System Project Schedule**

Pilot System Work shall be undertaken and completed in accordance with the applicable Pilot System Project Schedule, as described in TP Section 7. Each Pilot System Project Schedule shall be used by the parties for planning and monitoring the progress of the Pilot System Work and as the basis for determining the amount of payments to be made to Developer. If Developer fails to provide an acceptable Pilot System Project Schedule within 90 Days after issuance of Pilot System NTP 1 or any subsequent NTP for a Pilot System, Developer shall have no right to receive payments until such time as Developer has prepared and TxDOT has approved such Pilot System Project Schedule.

##### **4.3.1.2 Future Project Segment Schedule**

Project Segment Work shall be undertaken and completed in accordance with the applicable Project Segment Schedule. Each Project Segment Schedule shall be used by the parties for planning and monitoring the progress of the Work and as the basis for determining the amount of payments to be made to Developer. Developer shall incorporate the Project Segment Completion Deadlines set forth in the Project Segment Supplement into its proposed Project Segment Schedule of all activities necessary to complete the Project Segment by such Project Segment Completion Deadlines. If Developer fails to provide an acceptable Project Segment Project Schedule within 90 Days after issuance of any NTP for a Project Segment, Developer shall have no right to receive payments until such time as Developer has prepared and TxDOT has approved such Project Segment Project Schedule.

#### **4.3.2 Float**

All Float contained in a Project Schedule, as initially approved or generated thereafter, shall be considered a Project resource available to either party or both Parties as needed to achieve schedule milestones, interim completion dates and/or Completion Deadlines. All Float shall be shown as such in the relevant Project Schedule on each affected schedule path. Identification of (or failure to identify) Float on the schedule shall be examined by TxDOT in determining whether to approve the relevant Project Schedule. Once identified, Developer shall monitor, account for and maintain Float in accordance with critical path methodology.

### **4.4 Prerequisites for Start of Construction**

Developer shall not start construction (or recommence construction following any suspension) of any portion of the Project prior to occurrence of all the following events,

except with the prior written approval of TxDOT, in its sole discretion, and Developer shall commence such construction promptly following occurrence of such events:

**4.4.1** TxDOT shall have issued the relevant NTP.

**4.4.2** TxDOT shall have approved the relevant Project Schedule.

**4.4.3** TxDOT shall have provided written acceptance of the Professional Services Quality Program, the Civil Construction Quality Program, the Systems Services Quality Program, the Civil Construction Quality Program, and if Hazardous Materials are identified in connection with the Project, the Hazardous Materials Management Plan.

**4.4.4** All requirements of the Construction Quality Program and the Toll Systems Services Quality Program, which are a condition to construction and installation, shall have been met

**4.4.5** TxDOT shall have approved all applicable Design Documents and received all Construction Documents relating to such Work.

**4.4.6** All Governmental Approvals necessary for construction of the applicable portion of the Project shall have been obtained and all conditions of such Governmental Approvals, which are a prerequisite to commencement of such construction, shall have been performed and satisfied.

**4.4.7** All insurance policies, bonds and letters of credit required to be delivered to TxDOT hereunder prior to commencement of construction shall have been received and approved by TxDOT and shall remain in full force and effect.

**4.4.8** All necessary rights of access for such portion of the Project shall have been obtained.

**4.4.9** All pre-construction environmental surveys and mitigation shall have been completed as required for the area(s) proposed for construction, and Developer shall have performed all other survey work and delivered all notices required by the Contract Documents to be delivered prior to commencement of construction on such portion of the Project.

As used in this Section 4.4, the term "construction" specifically excludes potholing and geotechnical investigations incidental to design Work, mobilization, Project Site security and establishment of work yard(s) and storage sites.

## **4.5 Recovery Schedule**

**4.5.1** If at any time, the Work on any Critical Path item is delayed, other than solely for a reason for which Developer is entitled to a time extension pursuant to Section 13, for a period which exceeds the greater of either 30 Days in the aggregate or that number of Days in the aggregate equal to 5% of the Days remaining until a Completion

Deadline, then Developer shall prepare and submit to TxDOT for review and approval with the next Monthly Update a Recovery Schedule demonstrating Developer's proposed plan to regain lost schedule progress and to achieve the original contractual milestones in accordance with this Agreement and any Project Segment Supplement, including System Acceptance by the applicable System Acceptance Deadline, Punch List Acceptance by the applicable Punch List Acceptance Deadline and Final Acceptance by the applicable Final Acceptance Deadline.

**4.5.2** TxDOT shall notify Developer within 14 Days after receipt of each such Recovery Schedule whether the Recovery Schedule is deemed accepted or rejected. Within 7 Days after any rejection by TxDOT of the Recovery Schedule, Developer will resubmit a revised Recovery Schedule incorporating TxDOT's comments. When TxDOT accepts Developer's Recovery Schedule, Developer shall, within five Days after TxDOT's acceptance, incorporate and fully include such schedule into the applicable Project Schedule, deliver the same to TxDOT and proceed in accordance with the approved Recovery Schedule.

**4.5.3** All costs incurred by Developer in preparing, implementing and achieving the Recovery Schedule shall be borne by Developer and shall not result in a change to the applicable Price, except to the extent that a change in the applicable Price is permitted in accordance with Section 13.

**4.5.4** If Developer fails to provide an acceptable Recovery Schedule as required herein, Developer shall have no right to receive Milestone Payments until such time as Developer has prepared and TxDOT has approved such Recovery Schedule.

## **SECTION 5. CONTROL OF WORK**

### **5.1 Control and Coordination of Work**

Developer shall be solely responsible for and have control over the installation, integration, construction and testing means, methods, techniques, sequences, procedures and site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents.

### **5.2 Safety**

Developer shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Project Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of TxDOT and its consultants, visitors to a Project Site and members of the public who may be affected by the Work. Developer shall at all times comply with all health and safety requirements contained in the Technical Provisions and all such requirements under applicable Law.

### **5.3 Obligation to Minimize Impacts**

Developer shall ensure that all of its activities and the activities of Developer-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

### **5.4 Inspection and Testing**

#### **5.4.1 Developer Inspection and Testing**

Developer shall perform the inspection, sampling, testing, quality control and quality assurance necessary for Developer to comply with its obligations under the Contract Documents.

#### **5.4.2 Oversight and Inspection and Owner Verification Testing by TxDOT and Others**

All materials and each part or detail of the Work shall also be subject to oversight, inspection and owner verification testing by TxDOT and other Persons designated by TxDOT. At all points in performance of the Work at which specific inspections and/or approvals by TxDOT are required by the Technical Provisions and/or the Construction Quality Program, Developer shall not proceed beyond that point until TxDOT has made such inspection or approval or waived its right in writing to inspect or approve. Such oversight, inspection and/or testing does not make such Person a party to this Agreement nor will it change the rights of the Parties. Developer hereby consents to such oversight, inspection and owner verification testing. Upon request from TxDOT, Developer shall

furnish information to such Persons as are designated in such request and shall permit such Persons access to any Project Site and all parts of the Work.

#### **5.4.3 Obligation to Uncover Finished Work**

Developer shall inform TxDOT in writing of any part of the Work which is about to be covered and offer a full and adequate opportunity to TxDOT to inspect and test such part of the Work before it is covered. At all times before any Final Acceptance, Developer shall remove or uncover such portions of the finished Work as directed by TxDOT. After examination by the TxDOT and any other Persons designated by TxDOT, Developer shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Developer's cost and Developer shall not be entitled to any time extension. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by TxDOT (if applicable) or without inspection in accordance with TP Sections 2.2 and 8 may be ordered uncovered, removed or restored at Developer's cost and without a time extension, even if the Work proves acceptable and conforming after uncovering. Except with respect to Work done or materials used as described in the foregoing sentences of this Section 5.4.3, if Work exposed or examined under this Section 5.4.3 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a TxDOT-Caused Delay, and Developer shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby. Refer to Section 5.6 for provisions regarding payments owing by Developer to TxDOT if TxDOT agrees (in its sole discretion) to accept certain Nonconforming Work.

### **5.5 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals**

#### **5.5.1 Oversight and Acceptance**

The oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances and approvals conducted by TxDOT and others do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. TxDOT may request remedies for Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with the requirements of the Contract Documents at any time prior to any Final Acceptance, whether or not previous oversight, spot checks, inspections, verifications, audits, tests, reviews, acceptances or approvals were conducted or waived by TxDOT or any such Persons.

#### **5.5.2 No Estoppel**

Developer shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty, maintenance or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections

performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. TxDOT shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after a Final Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and materials furnished by Developer, or from showing that the Work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, TxDOT shall not be precluded or estopped from recovering from Developer and its Surety(ies) such damages as TxDOT may sustain by reason of Developer's failure to comply or to have complied with the terms of the Contract Documents.

## **5.6 Nonconforming Work**

### **5.6.1 Rejection, Removal and Replacement of Work**

Nonconforming Work rejected by TxDOT shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Developer's cost and without a time extension; and Developer shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that TxDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. If Developer fails to correct any Nonconforming Work within 10 Days of receipt of notice from TxDOT requesting correction, or if such Nonconforming Work cannot be corrected within 10 Days, and Developer fails to (a) provide to TxDOT a schedule for correcting any such Nonconforming Work acceptable to TxDOT within such 10-Day period, (b) commence such corrective Work within such 10-Day period and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then TxDOT may cause the Nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due Developer and/or obtain reimbursement from Developer for such cost.

### **5.6.2 Agreement to Accept Nonconforming Work**

If TxDOT agrees to accept any Nonconforming Work with respect to a Pilot System and/or a Project Segment without requiring it to be fully corrected, TxDOT shall be entitled to reimbursement of a portion of the applicable Price in an amount equal to the greatest of (a) the amount deemed appropriate by TxDOT to provide compensation for impacts to all affected parties (including TxDOT) such as future maintenance and/or other costs relating to the Nonconforming Work, (b) the amount of a Price allocated to such Work, or (c) 100% of Developer's cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents. Such reimbursement shall be payable to TxDOT within 10 Days after Developer's receipt of an invoice therefore. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Developer pursuant to this Agreement. Developer acknowledges and agrees that TxDOT shall have sole discretion regarding



acceptance or rejection of Nonconforming Work and shall have sole discretion with regard to the amount payable in connection therewith.

## **SECTION 6. ACCESS TO PROJECT SITE; UTILITIES; ENVIRONMENTAL COMPLIANCE**

### **6.1 Access to Project Site**

**6.1.1** TxDOT shall be responsible for providing Developer with such access to the Final ROW for a Pilot System or a Project Segment, as applicable, as is necessary to perform the Work. To the extent that Developer has not been provided with access to portions of the Final ROW prior to the date set forth on the relevant Project Schedule, Developer shall work around such Final ROW with the goal of minimizing delay to the completion of the Project.

**6.1.2** TxDOT shall be responsible for the acquisition of any real property outside the Schematic ROW that must be acquired due to a TxDOT-Directed Change, subject to TxDOT's reasonable determination that the property is necessary, subject to the limitations in Section 13.

**6.1.3** All costs and expenses for the acquisition of any temporary right or interest in real property that Developer determines necessary or desirable for its convenience in performance of the Work, such as for work space, contractor laydown areas, materials or storage areas, or for any permanent interest in real property that Developer may wish to acquire for its convenience which lies outside the applicable Schematic ROW, shall be Developer's sole responsibility, to be undertaken at Developer's sole cost and expense. TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such rights or interests, and shall not use its powers of eminent domain in connection therewith. Developer will comply with all applicable Laws in acquiring and maintaining or disposing of any such property rights or interests. Developer shall cause the documentation of any such property interest to contain the grantor's express acknowledgment that TxDOT shall have no liability with respect thereto.

### **6.2 Utilities**

TxDOT shall ensure that all necessary Utilities enter the Schematic ROW of each Pilot System and Project Segment. Developer shall be responsible for verifying the location of all Utilities shown on any Utility Strip Map provided by TxDOT or otherwise related to any Pilot System and any Project Segment (including undertaking field inspections and Project Site studies, researching Utility Owner records and confirming Developer's findings with TxDOT and the Utility Owners), and for obtaining all Utility installations, hook-ups and service extensions that are required to operate the System, and for coordination with Utility Owners, at Developer's cost. Developer shall use its best efforts to minimize costs for which Developer is entitled to compensation, including avoidance of an Unidentified Utility where feasible rather than its removal and/or reinstallation in a new location, and to minimize any delay for which Developer is entitled to an extension in a Completion Deadline pursuant to this Section 6.2.

## **6.3 Hazardous Materials Management**

### **6.3.1 Procedures and Compensation for Hazardous Materials Management**

**6.3.1.1** If during the course of the Work, Developer encounters Hazardous Materials or potential Recognized Environmental Conditions, Developer shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify State or federal agencies under applicable Law; and (b) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable, Developer shall utilize appropriately trained personnel and shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by TxDOT. Developer's plan for Hazardous Materials Management shall be subject to the prior written approval of TxDOT. Wherever feasible and consistent with applicable Law, contaminated soil and groundwater shall not be disposed off-site. All Hazardous Materials and potential Recognized Environmental Conditions shall be managed, handled, remediated, transported (where applicable) and disposed of in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and the approved Project Site Investigation Report.

**6.3.1.2** Except where required to take an immediate action required by applicable Law, Developer shall afford TxDOT the opportunity to inspect sites containing Hazardous Materials or potential Recognized Environmental Conditions before any action is taken which would inhibit TxDOT's ability to ascertain the nature and extent of the contamination.

**6.3.1.3** Subject to the limitations and exceptions set forth in this Section 6.3. and Section 13, Developer shall be entitled to a Change Order as set forth in Section 13.9.3 providing for additional compensation and/or a time extension with respect to costs and delays directly attributable to the discovery of Hazardous Materials within applicable Schematic ROW or any parcels added to the applicable Project Site by a TxDOT-Directed Change or required due to a Force Majeure Event.

### **6.3.2 Hazardous Material Generator**

As between Developer and TxDOT, TxDOT shall be considered the generator of Hazardous Materials on any Final ROW properties as of the Effective Date; provided, however, that the foregoing shall not preclude or limit any rights or remedies that TxDOT may have against third parties and/or prior owners, lessees, licensees and occupants of the Final ROW. As between Developer and TxDOT, Developer shall be considered the generator of any Hazardous Materials on any Final ROW which result from (a) Release(s) of Hazardous Material attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity; and (b) Release(s) of Hazardous Materials arranged to be brought onto any Final ROW or elsewhere by any Developer-Related Entity regardless of the cause of the Release of Hazardous Materials.

### **6.3.3 Hazardous Material Releases Caused by Developer**

Hazardous Materials Management costs, including assessment, containment, and remediation expenses, on, arising from or related to and/or which result from (a) Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity; or (b) Release(s) of Hazardous Materials arranged to be brought onto any Final ROW or elsewhere by any Developer-Related Entity shall not be compensable to Developer, regardless of the cause of the Release of Hazardous Materials.

### **6.3.4 Hazardous Materials Brought to Final ROW by Developer**

Developer shall be solely responsible for: (a) compliance with all Laws applicable to Hazardous Materials brought onto the Project Site by any Developer-Related Entity; (b) ~~use, containment, storage, management, transport and disposal~~ of all Hazardous Materials in accordance with the Contract Documents and all applicable Laws and Environmental Approvals; and (c) payment of all Losses associated with, arising out of or related to such Hazardous Materials.

### **6.3.5 Environmental Approvals Relating to Hazardous Materials Management**

Developer shall be solely responsible for obtaining all Governmental Approvals relating to Hazardous Materials Management including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Developer shall be solely responsible for compliance with such Governmental Approvals and applicable Laws, including those governing the preparation of waste profiles, waste manifests and bills of lading.

## **6.4 Environmental Compliance**

**6.4.1** Developer shall be responsible for compliance with all conditions and requirements of the Environmental Approvals, including TxDOT-Provided Approvals and similar Governmental Approvals, specifically applicable to the Project, other than the mitigation requirements that TxDOT expressly agrees to perform for any Pilot System and/or Project Segment. Each Price includes compensation for Developer's performance of all environmental requirements and conditions relating to the Pilot System and Project Segment to which such Price relates, including mitigation measures.

**6.4.2** Developer shall be responsible for obtaining any New Environmental Approvals required for the Project (including any specific Pilot System or Project Segment), including modifications to any TxDOT-Provided Approvals that may be required in connection with any Final Design; provided, however, that Developer shall not be obligated to obtain any New Environmental Approval resulting from the failure of TxDOT to include the tolling concept in a record of decision (ROD) or finding of no significant impact for a particular Pilot System or Project Segment. If any New Environmental Approval is necessitated by a TxDOT-Directed Change or Force Majeure Event, Developer shall be

responsible for obtaining such New Environmental Approval and/or performing any additional mitigation requirements of such New Environmental Approval only if directed to do so by a Directive Letter or a Change Order. TxDOT shall cooperate with Developer and support its efforts to obtain any such New Environmental Approval. Any Change Order covering a TxDOT-Directed Change or Force Majeure Event shall include compensation to Developer for additional costs incurred by Developer to obtain the New Environmental Approval and to implement any changes in the Work (including performance of additional mitigation measures which are Developer's responsibility) resulting from such New Environmental Approvals, as well as any time extension necessitated by the TxDOT-Directed Change or Force Majeure Event, subject to the conditions and limitations contained in Section 13.

## **SECTION 7. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; CIVIL RIGHTS; SUBCONTRACTORS; KEY PERSONNEL**

### **7.1 DBE Requirements**

**7.1.1** TxDOT's Disadvantaged Business Enterprise (DBE) Program applicable to the Project are set forth in Exhibit G. The purpose of the DBE Program is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The DBE participation goals for the Project as a whole are 4% DBE participation. Developer shall comply with all requirements set forth in Exhibit G and the DBE Performance Plan. TxDOT shall specify individual DBE participation goals with its issuance of each NTP. Such individual DBE participation goals specified for each Pilot System and Project Segment may vary in TxDOT's discretion; provided, however, that the required overall DBE participation for the Project shall not exceed the above-specified percentages.

**7.1.2** Developer shall include provisions to effectuate Section 7.1.1 and Exhibit G in every Subcontract (including purchase orders and in every subcontract of any Developer-Related Entity for Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

**7.1.3** For each Pilot System (other than Pilot System #1) and Project Segment, Developer shall provide TxDOT with Forms H-1 through H-5 of the Instructions to Proposers, in form and substance satisfactory to TxDOT.

### **7.2 Civil Rights; Equal Employment Opportunity**

**7.2.1** Developer shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents. Developer shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26 in the award and administration of FHWA-assisted agreements. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in the termination of the Contract Documents or such other remedy as TxDOT deems appropriate.

**7.2.2** Developer shall include Section 7.2.1 in every Subcontract (including purchase orders and in every subcontract of any Developer-Related Entity for Work), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

**7.2.3** Developer confirms for itself and all Subcontractors that Developer and each 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 Developer and each Subcontractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. Developer shall comply

with all applicable Equal Employment Opportunity and nondiscrimination provisions set forth in Exhibit D, and shall require its Subcontractors to comply with such provisions.

### **7.3 Subcontracts**

**7.3.1** Each instrument evidencing any agreement of Developer with any Subcontractor shall provide, in terms and in form and substance satisfactory to TxDOT that: (a) the rights of Developer under such instrument are assigned to TxDOT contingent only upon delivery of written request from TxDOT or its successor or assign following default by Developer or termination or expiration of this Agreement; and (b) all warranties (express and implied) of such Subcontract shall inure to the benefit of TxDOT.

**7.3.2** Developer shall provide TxDOT with a list of all Subcontracts with each monthly update, shall allow TxDOT access to all Subcontracts and records regarding Subcontracts and shall deliver to TxDOT, within 10 Days after execution, copies of all Major Subcontracts and, within 10 Days after receipt of a request from TxDOT, copies of all other agreements or documents as may be requested.

**7.3.3** The retention of Subcontractors by Developer will not relieve Developer of its responsibility hereunder or for the quality of the Work or materials provided by it. Developer will at all times be held fully responsible to TxDOT for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by its Subcontractors and persons employed by them and no Subcontract entered into by Developer will impose any obligation or liability upon TxDOT to any such Subcontractor or any of its employees. Nothing in this Agreement will create any contractual relationship between TxDOT and any Subcontractor of Developer

**7.3.4** The following requirements shall apply to Subcontracts:

(a) Developer shall, prior to soliciting any bids for performance of work or labor or rendering of services relating to the design or construction of any portion of the Project or for special fabrication, assembly and installation of any portion of the Work, submit to TxDOT for its review and approval a procedure for the conduct of the bidding and approval process applicable to Major Subcontracts. Developer may use procedures set forth in the TxDOT Standard Specifications or may submit alternative procedures to TxDOT for approval. Developer shall not enter into any Major Subcontracts except in accordance with the foregoing procedure. Once Developer has entered into any Major Subcontract, Developer shall not have the right to make any substitution of such Subcontractor except with TxDOT's prior written approval.

(b) As soon as Developer has identified a potential Subcontractor, but in no event less than 30 Days prior to the scheduled initiation of Work by such proposed Subcontractor, Developer shall notify TxDOT in writing of the name, address, phone number and contact name of such Subcontractor.

(c) Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with the requirements of the Contract Documents,

and shall include those terms that are specifically required by the Contract Documents to be included therein. All Subcontracts, including Subcontracts with Suppliers, shall incorporate terms substantially similar to those contained in this Agreement, specifically including an agreement by the Subcontractor to participate in any dispute proceeding pursuant to Section 19, if such participation is requested by either TxDOT or Developer, and a requirement to allow audits by TxDOT as provided in Section 21.4.

**7.3.5 Each Subcontract shall:**

(a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents and prudent industry standards for work of similar scope and scale and shall set forth effective procedures for claims and change orders.

(b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.

(c) Include a covenant to maintain all licenses required by applicable Law, and set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale.

(d) Be fully assignable without cost to TxDOT, such assignability to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility and include express requirements that: (i) it will maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof by Developer, and provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish TxDOT under this Agreement; and (iii) allow TxDOT to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption by TxDOT. No such assignment shall release or relieve Developer from its obligations or liabilities under the assigned Subcontract.

(e) Not be assignable by the Subcontractor to any party other than TxDOT (or its assignee) without Developer's prior written consent.

(f) With respect to any Subcontract which, when aggregated with all Subcontracts between Developer and such Subcontractor for the same Fiscal Year, is in excess of \$250,000: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Developer and the Indemnified Parties against any and all Losses arising out of, related to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(g) Expressly require the Subcontractor to participate in meetings between Developer and TxDOT, upon TxDOT's request, concerning matters pertaining to



such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by Developer, and provided further that nothing in this clause (g) shall limit the authority of TxDOT to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(h) Expressly provide that all Liens, claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of TxDOT in the Project or the Final ROW.

(i) Be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by this Agreement.

**7.3.6** Developer shall not amend any Subcontract with respect to any of the ~~foregoing matters without the prior written consent of TxDOT~~ **All Subcontracts with Affiliates** shall be on terms no less favorable (as determined by TxDOT) to Developer than to non-Affiliates of the Subcontractor. Developer shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

#### **7.4 Key Personnel; Qualifications of Employees**

**7.4.1** The Contract Documents identify certain job categories of Key Personnel for the Project. Developer shall not change, or permit any change in, any Key Personnel without the prior written consent of TxDOT in accordance with TP Section 2.1.2.3.

**7.4.2** All individuals performing Work shall have the skill and experience and any licenses required to perform the Work assigned to them. If TxDOT determines, in its sole discretion, that any Person employed by Developer or any Subcontractor is not performing the Work in a proper, desirable and skillful manner or is detrimental to the progress of the Work and/or the Project, then, at the written request of TxDOT, Developer shall remove such Person from the Project and such Person shall not be reemployed on the Project without the prior written approval of TxDOT. If such Person is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then TxDOT may suspend the affected portion of the Work by delivery of written notice of such suspension to Developer. Such suspension shall in no way relieve Developer of any obligation contained in the Contract Documents or entitle Developer to a Claim or Change Order. Once compliance is achieved, TxDOT will notify Developer and Developer shall be entitled to and shall promptly resume the Work. During the period of any such suspension, Developer shall not be entitled to the payment of any portion of the applicable Price or any other payment hereunder.

**7.4.3** Developer shall designate in writing who shall have onsite field and office authority to represent and act for Developer. An authorized representative shall be present at the jobsite at all times while Work is actually in progress at the jobsite. Developer shall provide phone and pager numbers for all Key Personnel. TxDOT requires the ability to contact the following Key Personnel 24 hours per Day, seven Days per week: Project Manager, Deputy Project Manager – System Design (while System testing is

underway), System Test Manager (while System testing is underway), Deputy Project Manager – Civil Design and Construction (while construction is underway), Maintenance Manager (during the Maintenance Term).

**7.4.4** Developer acknowledges and agrees that the award of this Agreement by TxDOT to Developer was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Developer's commitment that such individuals would be available to undertake and perform the Work. Developer represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless otherwise agreed to by TxDOT in writing, individuals filling Key Personnel roles shall be available for the Work and shall maintain active involvement in the prosecution and performance of the Work. In addition to the foregoing, TxDOT reserves the right to require a 100% time commitment per position from any Key Personnel if TxDOT, in its sole discretion, determines that such personnel are not devoting sufficient time to the prosecution and performance of the Work.

**7.4.5** Subject to the other terms, provisions and requirements of the Contract Documents (including the requirements for quality control and quality assurance and the right of TxDOT to require a 100% time commitment per position as set forth in Section 7.4.4), TxDOT acknowledges that an individual may fill more than one Key Personnel role. If an individual filling one or more Key Personnel roles is not available for the Work and does not maintain active involvement in the prosecution and performance of the Work, Developer acknowledges that TxDOT, the Work and the Project will suffer significant and substantial Losses and that it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT in such event. Therefore, if certain Key Personnel are not available or not actively involved in the prosecution and performance of the Work, as determined by TxDOT, in its sole discretion, Developer agrees to pay TxDOT a liquidated amount as follows, for each position held by such individual, as deemed compensation to TxDOT for such Losses:

<b>POSITION</b>	<b>LIQUIDATED AMOUNT</b>
Project manager	\$100,000
Deputy project managers	\$50,000
All other positions noted with an asterisk in <u>Exhibit X</u>	\$25,000

Developer understands and agrees that any damages payable in accordance with this Section 7.4.5 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. TxDOT shall have the right to deduct or draw upon any amount owed by Developer to TxDOT hereunder from any amounts owed by TxDOT to Developer, including any Retainage which may be payable by TxDOT to Developer, or from any bond or letter of credit held by TxDOT under this Agreement. Notwithstanding the foregoing, Developer shall not be liable for liquidated damages under this Section 7.4.5 if (i) Developer removes or replaces such personnel at the direction of TxDOT; (ii) such individual is unavailable due to death,

retirement, injury or no longer being employed by the applicable Developer-Related Entity (provided that moving to an affiliated company shall not be considered grounds for avoiding liquidated damages), or (iii) such individual is unavailable due to TxDOT's failure to issue Pilot System NTP 1 within 150 Days of the Agreement date for a reason other than the fault, act or omission of any Developer-Related Entity; provided, however, in each such case, Developer shall promptly propose to TxDOT a replacement for such personnel, which individual shall be subject to TxDOT's review and written consent. If Pilot System NTP 1 has not been issued within 150 Days after the Agreement date, Developer shall have 30 Days after issuance of Pilot System NTP 1 to identify any change in Key Personnel without incurring any liquidated damages. Further notwithstanding the foregoing, following the issuance of Pilot System NTP 1 and subject to TxDOT's right to review and approve the designation of additional or different Key Personnel for any subsequent Pilot System or Project Segment, Developer shall not be liable for liquidated damages under this Section 7.4.5 if the same Key Personnel are not available to work on each such subsequent Pilot System or Project Segment; provided, however, that once approved, the Key Personnel designated for any such subsequent Pilot System or Project Segment must be available to complete the Work for such Pilot System or Project Segment. Following any TxDOT-approved substitution or replacement of a Key Personnel pursuant to the terms hereof for any Pilot System or Project Segment, the new individual shall be considered a Key Personnel for all purposes under this Agreement, including the provisions of this Section 7.4.5 relative to liquidated damages.

**7.4.6** Developer acknowledges and agrees that the Key Personnel positions are of critical importance to TxDOT and the Project. In addition to the approval rights of TxDOT set forth in Section 7.4.2 and the liquidated damages set forth in Section 7.4.5, if an individual in certain Key Personnel positions delineated on Exhibit X leaves that position for a reason other than as set forth in clauses (i)-(iii) of Section 7.4.5, TxDOT shall have the unilateral right to terminate this Agreement without further liability to Developer, except for payment for such Work that has been completed and accepted as of the date of termination, unless Developer provides TxDOT a replacement acceptable to TxDOT within 30 Days after the earlier of (i) the date on which such individual has left his/her position; or (ii) Developer or TxDOT becomes aware that such individual intends to leave his/her position. In connection with a termination under this Section 7.4.6, Developer shall not be entitled to any payment of profit, overhead or any settlement costs under Section 15, but shall only be entitled to the payment of Developer's actual costs incurred and not previously paid for by TxDOT in connection with Work which has been completed and accepted as of the termination date.

**7.4.7** Any position on the Developer's Project (including specific Pilot System and Project Segment) organizational chart or within the Developer's organization structure that is above that of a Key Personnel position for which liquidated damages may apply will be deemed to be a Key Personnel position and, for purposes of liquidated damages under Section 7.4.5, shall be at the level which is immediately higher than the Key Personnel immediately below that position (e.g., an individual that reports into the deputy project manager level but is higher than the other Key Personnel level would be considered a deputy project manager for this purpose).

## **7.5 Responsibility for Employees and Subcontractors**

Developer shall supervise and be responsible for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity, as though Developer directly employed all such Persons.

## SECTION 8. PERFORMANCE AND PAYMENT BONDS; OTHER SECURITY; FINANCIAL INFORMATION

### 8.1 Provision of Bonds

Developer shall provide payment, performance and warranty bonds to TxDOT securing Developer's obligations hereunder, each in an amount set forth herein, and shall maintain such bonds in full force and effect as described below.

**8.1.1** As a condition to issuance of Pilot System NTP 1, Developer shall provide, and continuously maintain in place for the benefit of TxDOT, a Performance Bond for the Pilot System Work covered by Pilot System NTP 1 in the form of Exhibit H. As a condition to issuance of an NTP for any Pilot System or a Project Segment other than Pilot System NTP 1, Developer shall provide a Rider to the existing Performance Bond in the form of attached Exhibit H-1 (with such modifications as TxDOT approves in writing, in its sole discretion), or furnish TxDOT with a separate Performance Bond in the form of attached Exhibit H (with such modifications as TxDOT approves in writing, in its sole discretion), with respect to such additional Pilot System or Project Segment. Such bond (or Rider, as the case may be) shall be in an amount of 100% of the Pilot System Price or Project Segment Price, as applicable. Subject to Section 8.1.3, TxDOT will release any individual Performance Bond relating solely to a Pilot System or a Project Segment or, if a Rider is provided, reduce the amount of the Performance Bond by the Pilot System Price or Project Segment Price, as applicable, (a) upon expiration of the Warranty term related to such Pilot System or Project Segment, as applicable, provided that no outstanding claims are then pending or threatened against Developer hereunder, or (b) upon satisfaction of the conditions in Section 8.1.3.

**8.1.2** As a condition to issuance of Pilot System NTP 1, Developer shall provide, and continuously maintain in place for the benefit of TxDOT, a Payment Bond for the Pilot System Work covered by Pilot System NTP 1 in the form of Exhibit I. As a condition precedent to issuance of an NTP for any Pilot System or a Project Segment other than Pilot System NTP 1, Developer shall provide a Rider to the existing Payment Bond in the form of Exhibit I-1 (with such modifications as TxDOT approves in writing, in its sole discretion), or furnish TxDOT with a separate Payment Bond in the form of Exhibit I (with such modifications as TxDOT approves in writing, in its sole discretion) with respect to such additional Pilot System or Project Segment. Such bond (or Rider, as the case may be) shall be in an amount of 100% of the relevant Pilot System Price or Project Segment Price. Subject to Section 8.1.3, TxDOT will release any individual Payment Bond relating solely to a Pilot System or a Project Segment or, if a Rider is Provided, reduce the amount of the Payment Bond by the Pilot System Price or Project Segment Price, as applicable, (a) upon receipt of (i) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, (b) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed, or (c) upon satisfaction of the conditions in Section 8.1.3.

**8.1.3** After any Final Acceptance, subject to the requirements herein, Developer may obtain a reduction in the amount of the relevant Performance Bond by providing a warranty bond, or such other security as is approved by TxDOT, in its sole discretion, which shall guarantee performance of the Work required to be performed during the Warranty term and which shall also constitute a payment bond guaranteeing payment to Persons performing such Work ("Warranty Bond"). The Warranty Bond shall be (i) in an amount equal to 20% of the applicable Pilot System Price or Project Segment Price, (ii) substantially in the form attached hereto as Exhibit O (with such modifications as TxDOT approves in writing, in its sole discretion), and (iii) released upon satisfaction of the conditions in Section 8.1.1(a) and Section 8.1.2(a) or (b).

**8.1.4** As a condition to any Final Acceptance, for each Pilot System and Project Segment, Developer shall furnish TxDOT with (a) a Maintenance Performance Bond in the form of Exhibit H-2 (with such modifications as TxDOT approves in writing, in its sole discretion), and (b) a Maintenance Payment Bond in the form of Exhibit I-2 (with such modifications as TxDOT approves in writing, in its sole discretion). After the initial Maintenance Performance Bond and Maintenance Payment Bond are issued, as a condition precedent to subsequent Final Acceptances, in lieu of providing separate Maintenance Performance Bonds and Maintenance Payment Bonds for each additional Pilot System and/or Project Segment, Developer may provide Riders to the existing Maintenance Performance Bond and Maintenance Payment Bond. Maintenance Performance Bonds and Maintenance Payment Bonds (or Riders, as the case may be) shall be in an amount equal to 100% of the aggregate two (2) year Maintenance Price for the relevant Pilot System and/or Project Segment. Developer's obligation to maintain and provide a current Maintenance Performance Bond and Maintenance Payment Bond with respect to a Pilot System and Project Segment shall continue throughout the Maintenance Term for such Pilot System and Project Segment, but TxDOT will accept Maintenance Performance Bonds and Maintenance Payment Bonds with a stated term of at least two (2) years with a statement set forth in the applicable bond that it shall be renewable annually in accordance with the Surety's customary renewal practices. Upon expiration of the applicable Maintenance Term, TxDOT will release any individual Maintenance Performance Bond relating solely to a Pilot System or a Project Segment or, if a Rider is provided, reduce the amount of the Maintenance Performance Bond, provided that no outstanding claims are then pending or threatened against Developer hereunder. Upon expiration of the applicable Maintenance Term, TxDOT will release any individual Maintenance Payment Bond relating solely to a Pilot System or a Project Segment or, if a Rider is provided, reduce the amount of the Maintenance Payment Bond (i) upon receipt of (A) evidence satisfactory to TxDOT that all Persons eligible to file a claim against the bond have been fully paid and (B) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, or (ii) upon expiration of the statutory period for Subcontractors to file a claim against the bond if no claims have been filed.

**8.1.5** Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least AVIII by "Best & Company" or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by

TxDOT in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Developer shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to TxDOT in its sole discretion. If a Price is increased in connection with a Change Order, TxDOT may, in its sole discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

## **8.2 Letter of Credit**

**8.2.1** As a condition to issuance of Pilot System NTP 1, and until the expiration or earlier termination of this Agreement, Developer shall obtain and continuously maintain in place for the benefit of TxDOT, an unconditional, irrevocable direct pay Letter of Credit securing Developer's obligation to perform under the Contract Documents during the period from and after System Acceptance of any Pilot System or Project Segment through ~~and until the expiration of this Agreement, including the obligation to pay Stipulated~~ Damages, compensation for Losses and any other amounts that may become payable to TxDOT under the Contract Documents. The required form of Letter of Credit is attached hereto as Exhibit Q. Subject to Section 16.5, the amount available for drawing under such Letter of Credit shall at all times be equal to the greater of \$1,000,000 or twenty percent (20%) of the aggregate Pilot System Prices and Project Segment Prices for Work for which an NTP has been issued hereunder (including Pilot Systems and Project Segments for which System Acceptance, Punch List Acceptance and/or Final Acceptance have occurred) as of such point in time (the "Minimum Letter of Credit Amount"); provided, however, that in no event shall the Minimum Letter of Credit Amount ever be required to exceed \$10,000,000. Unless the then-existing Letter of Credit is in an amount equal to \$10,000,000 (and the full amount of such Letter of Credit is available), as a condition precedent to issuance of any NTP after Pilot System NTP 1, Developer shall either amend the existing Letter of Credit to increase the amount available for drawing thereunder to the required Minimum Letter of Credit Amount, or furnish TxDOT with a separate unconditional, irrevocable direct pay Letter of Credit in the form of Exhibit Q in a stated amount sufficient to cause the aggregate amount available for drawing under all such Letters of Credit to equal at least the Minimum Letter of Credit Amount.

**8.2.2** TxDOT may draw upon the Letter of Credit, in whole in part, in the event that Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents from time to time are not paid in full by Developer within 10 Days of written demand therefor. No draw shall be deemed to cure any failure, breach or default by Developer hereunder and TxDOT shall retain all available rights and remedies under this Agreement.

**8.2.3** The issuing bank shall be a recognized financial institution having unsecured long-term debt obligations rated in one of the three highest rating categories of Moody's or Standard & Poor's and short-term obligations rated in the highest Rating Category of Moody's or Standard & Poor's (a "Letter of Credit Bank"). Should a Letter of Credit Bank's credit rating fall below that required herein, Developer shall provide a substitute Letter of Credit from a financial institution meeting such requirements within 15



Days. Failure to provide such substitute Letter of Credit shall entitle TxDOT to draw the full amount of such existing Letter of Credit (a "Default Draw") and hold the same as security against any obligation of Developer to perform under the Contract Documents during the period from and after System Acceptance of any Pilot System or Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents hereunder, and thereafter TxDOT may apply such funds directly to satisfy obligations of Developer to perform under the Contract Documents during the period from and after System Acceptance of any Pilot System or Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents from time to time, as such amounts are incurred. Upon any use of the Default Draw as provided herein, Developer shall promptly provide TxDOT with additional cash in the amount of the Default Draw used so that the funds held as security are again equal to the original amount of the Default Draw. TxDOT shall release the proceeds of the Default Draw back to Developer (less any amounts applied as hereinabove provided and not reinstated), without interest thereon, only upon (i) provision of a new Letter of Credit as provided herein; or (ii) satisfaction of all conditions to release of a Letter of Credit hereunder. No Default Draw by TxDOT shall be deemed to cure Developer's obligation to provide a Letter of Credit as required hereunder.

**8.2.4** At least 60 Days prior to the stated expiration of any Letter of Credit provided hereunder, Developer shall either (i) deliver a replacement letter of credit in the form required hereby, (ii) deliver an extension of the Letter of Credit in the form required hereby for at least an additional year from the prior expiration date, or (iii) deposit cash or a certificate of deposit in the amount of the expiring Letter of Credit (without regard to prior draws or payments upon the same). Failure of Developer to comply with the foregoing shall entitle TxDOT to a Default Draw, with such proceeds to be used and held in the manner described in Section 8.2.2.

**8.2.5** In the event of a TxDOT draw on such Letter of Credit reducing the amount available to be drawn thereunder to compensate TxDOT for Developer's obligation to perform under the Contract Documents during the period from and after System Acceptance of any Pilot System or Project Segment through and until the expiration of this Agreement, including the obligation to pay Stipulated Damages, compensation for Losses and/or any other amounts that may become payable to TxDOT under the Contract Documents with respect to any Pilot System or Project Segment, Developer shall, within five (5) business days after such draw, cause the available amount of the Letter of Credit to be reinstated to the full amount required hereunder; provided, however, that the reinstatement obligations shall be subject to the limitations set forth in Section 17.6. Should Developer fail to reinstate such Letter of Credit, (x) TxDOT shall be entitled to draw the remaining amount of the Letter of Credit and hold the same as security as described and in the manner set forth in Section 8.2.2; and (y) such draw by TxDOT shall not cure Developer's obligation to provide a Letter of Credit as required hereunder.



**8.2.6** Provided that Developer has paid TxDOT any applicable Stipulated Damages, compensation for Losses and any other amounts that are payable to TxDOT under the Contract Documents, the Letter of Credit(s) shall be released after the satisfaction of all conditions to Final Payment of the Maintenance Price pursuant to Section 12.5 with respect to the last Maintenance Term to expire under this Agreement.

**8.2.7** Subject to Section 17.6, no draw upon the Letter of Credit(s) as provided herein shall preclude, inhibit, alter or modify TxDOT's rights to exercise any and all other rights and remedies available under the Contract Documents, at law or in equity.

### **8.3 No Relief of Liability**

Notwithstanding any other provision set forth in the Contract Documents, performance by a Surety or Guarantor of any of the obligations of Developer shall not relieve Developer of any of its obligations hereunder.

### **8.4 Intentionally Deleted.**

### **8.5 Periodic Updated Financial Information**

Each year during the term of this Agreement, within 60 days following the completion of Developer's annual audited financials, Developer shall deliver to TxDOT:

(a) The audited financial statements for the prior year, audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP). Financial statements must be provided in U.S. dollars. If financial statements submitted are prepared in accordance with other than U. S. GAAP, Developer shall include a letter from the entity's chief financial officer, treasurer, or certified public accountant discussing the areas of the financial statements that would be materially affected by a conversion to U. S. GAAP and providing an estimate of changes required to recalculate in accordance with U.S. GAAP. If audited financials are not available Developer shall include unaudited financials for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity. Provision of financial statements and information for a parent company or other affiliate will not be sufficient to satisfy the requirement to provide financial statements.

(b) Any financial ratings obtained.

(c) The most recent Securities and Exchange Commission 10-K and 10-Q reports and any 8-Ks filed since submission of the prior year's financial information (if Developer is publicly held or otherwise required to make such filings).

(d) A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the prior year's financial information, or a statement certifying that no material change has occurred and none is pending. The following list identifies certain items that TxDOT would consider a material change in financial condition. This list is intended to be indicative only. In instances where

a material change has occurred, or is anticipated, Developer shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project, and the projected full extent of the changes likely to be experienced in the periods ahead. Where appropriate, Developer shall identify the measures that will be undertaken to insulate the Project from any recent material changes, and those currently in progress or reasonably anticipated in the future:

(i) An event of default or bankruptcy involving Developer, a related business unit within the same corporation, or the parent corporation of the affected entity;

(ii) A downward change in tangible net worth of 10% of shareholder equity;

(iii) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale merger or acquisition which in any way involves Developer, a related business unit, or parent corporation of Developer;

(iv) A downward change in credit rating for Developer, a related business unit, or parent corporation of Developer;

(v) Inability to meet conditions of loan or debt covenants by Developer, a related business unit or parent corporation of Developer which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;

(vi) Developer, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity;

(vii) Other events known to Developer, a related business unit or parent corporation of the Developer which represents a material change in financial condition since submission of the prior year's financial information or may be pending for the next reporting period.

(e) Provide a letter from the certified public accountant, chief financial officer or treasurer for Developer, identifying all off balance sheet liabilities.

## **SECTION 9. INSURANCE**

Developer shall purchase and continuously maintain in full force and effect through the expiration of the time periods specifically provided below, the insurance coverages and limits specified in this Section 9. The insurance provided hereunder shall be available for the benefit of TxDOT and Developer with respect to covered claims, but shall not be interpreted to relieve Developer of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by TxDOT and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

### **9.1 Developer Provided Insurance**

As a condition to issuance of Pilot System NTP 1, Developer shall provide, at its own expense, insurance acceptable to TxDOT as described herein and shall maintain such insurance in full force and effect throughout the duration of this Agreement (including any Maintenance Option Term) as specified herein.

#### **9.1.1 Commercial General Liability Insurance**

Developer shall provide commercial general liability broad form coverage (for bodily injury, property damage, personal injury and advertising injury) written on an occurrence form that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) 2000 form CG 00 01. Such insurance shall include, by its terms or appropriate endorsements, coverage for bodily injury, broad form property damage, fire legal liability (not less than the replacement value of the portion of the premises occupied), personal injury, blanket contractual, independent contractors, premises operations, and products and completed operations. This coverage shall have a minimum limit of \$600,000 per occurrence and \$600,000 annual aggregate and shall be endorsed to cover each Pilot System, Project Segment and Project Site for which an NTP has been issued (with such coverage amounts to be individually available without dilution for each Pilot System, Project Segment and Project Site, but not aggregated together to increase the coverage amount available for a particular Pilot System, Project Segment or Project Site above the foregoing amounts). The policy shall include products and completed operations extended coverage for each Pilot System and Project Segment for a minimum of five years following Final Acceptance of such Pilot System or Project Segment. If Developer's commercial general liability insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the annual aggregate limits shall apply separately to the Project, or Developer may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of Developer; any such excess insurance shall be at least as broad as Developer's primary insurance. Developer shall be the named insured and each of the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of

any Developer-Related Entity, whether occurring on or off of each Project Site. The required limits can be satisfied by a combination of a primary policy and an excess policy.

#### **9.1.2 Workers' Compensation Insurance**

Developer shall provide worker's compensation insurance in conformance with applicable Law. Developer shall be the named insured on these policies. The worker's compensation coverage will contain the following endorsements:

- (a) A voluntary compensation endorsement.
- (b) An alternative employer endorsement.
- (c) An endorsement extending coverage to all states operations on an "if anv" basis.

#### **9.1.3 Business Automobile Liability Insurance**

Developer shall provide comprehensive business automobile liability insurance covering the ownership, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Work, including loading and unloading, with limits of not less than \$250,000 per person, \$500,000 per occurrence for bodily injury, and \$100,000 per occurrence for property damage liability. The coverage shall be endorsed to cover each Pilot System, Project Segment and Project Site for which an NTP has been issued (with such coverage amounts to be individually available without dilution for each Pilot System, Project Segment and Project Site, but not aggregated together to increase the coverage amount available for a particular Pilot System, Project Segment or Project Site above the foregoing amounts). Developer shall be the named insured and the Indemnified Parties shall be additional insureds with respect to liability arising out of the acts or omissions of any Developer-Related Entity, whether occurring on or off of each Project Site. The policy deductibles shall be subject to TxDOT's written approval. The required limits can be satisfied by a combination of a primary policy and an excess or umbrella policy.

#### **9.1.4 Professional Liability Insurance**

Developer shall provide Project-specific professional liability coverage with limits not less than \$5,000,000 per claim and aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design and/or engineering services performed by any Developer-Related Entity with respect to the Project. The policy shall have a retroactive date no later than May 13, 2005 and shall have a five-year extended reporting period from the date of the latest Final Acceptance to occur for any Pilot System or Project Segment with respect to events which occurred but were not reported during the term of the policy. The coverage shall include all Developer-Related Entities that are performing design and/or engineering services with respect to the Project. The Indemnified Parties shall not be a named insured under the policy, but the policy shall include an endorsement to provide vicarious liability coverage for TxDOT, the

State, and their respective officers, directors, agents and employees. The policy shall have a deductible of no greater than \$100,000.

## **9.2 General Insurance Requirements**

### **9.2.1 Premiums, Deductibles and Self-Insured Retentions**

Developer shall timely pay the premiums for all insurance required under this Section 9. Developer agrees that, for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Developer is responsible hereunder, Developer shall be solely responsible for all deductibles, self-insured retentions and amounts in excess of the coverage provided. Subject to the other terms of this Agreement, with respect to all matters for which TxDOT is responsible hereunder, TxDOT shall remain fully responsible for amounts in excess of the coverage provided.

### **9.2.2 Verification of Coverage**

9.2.2.1 Policies. Concurrently with Developer's execution hereof, Developer will deliver to TxDOT (1) a certificate of insurance with respect to each policy required to be provided by Developer under this Section 9 and (2) copies of all endorsements to the policies that set forth the required additional insureds and other amendments to the policy forms. The required certificates must include original signatures by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. TxDOT shall have no duty to pay or perform under this Agreement until such certificate(s) and endorsements, in compliance with all requirements of this Section 9, have been provided. Upon TxDOT's request in conjunction with a dispute, claim, item for which the insurance required hereunder is contemplated to cover and/or TxDOT's reasonable belief that Developer has not complied with the requirements of this Section 9, Developer shall provide to TxDOT certified, true and exact copies of each of the insurance policies (including renewal policies) required under this Section 9. Prior to issuance of any NTP subsequent to Pilot System NTP 1, Developer shall deliver to TxDOT a certificate of insurance or other evidence acceptable to TxDOT confirming that the Work and obligations of Developer with respect to such Pilot System or Project Segment shall be covered by the insurance coverages required pursuant to this Section 9.

9.2.2.2. Renewal Policies. Developer shall promptly deliver to TxDOT a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate shall be delivered not less than 45 Days prior to the expiration date of any policy and shall bear a notation evidencing payment of the premium therefore. If requested by TxDOT from time to time, certified duplicate copies of the renewal policy shall also be provided.

### **9.2.3 Subcontractor Insurance Requirements**

Developer shall cause each Subcontractor to provide insurance that complies with requirements for Developer-provided insurance set forth in this Section 9 in circumstances where the Subcontractor is not covered by Developer-provided insurance and provided that Developer shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. Developer shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and motorized vehicle liability insurance policies. Developer shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by TxDOT, Developer shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

### **9.2.4 Endorsements and Waivers**

All insurance policies required to be provided by Developer hereunder shall contain or be endorsed to comply with the following provisions, provided that, for the workers' compensation policy, only the following clauses (d) and (f) shall be applicable:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents and consultants, and shall specify that coverage continues notwithstanding the fact that Developer has left a Project Site. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or additional insured shall be excess of such insurance and shall not contribute with it.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents and consultants).

(c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 30 Days' prior written notice by certified mail, return receipt requested, has been given to TxDOT. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All endorsements adding additional insureds to required policies shall be on form CG-20-10 (1985 edition) or an equivalent form providing additional insureds with coverage for "completed operations".

(f) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and errors and omissions policies).

(g) The commercial general liability insurance policy shall be endorsed to state that coverage for Subcontractor employees shall not be excluded.

(h) The automobile liability insurance policy shall be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

#### **9.2.5 Waivers of Subrogation**

TxDOT and Developer waive all rights against each other, against each of their agents and employees and against Subcontractors and their respective members, directors, officers, employees, agents and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this Section 9, except such rights as they may have to the proceeds of such insurance and provided further that, Developer shall not be entitled to additional compensation or time extension under this Agreement to the extent compensated by any insurance specified herein. Developer shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including workers' compensation, shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

#### **9.2.6 Changes in Requirements**

TxDOT shall notify Developer in writing of any changes in the requirements applicable to insurance required to be provided by Developer. Pursuant to a Change Order, TxDOT shall pay any additional cost from such change and any reduction in cost shall reduce the applicable Price.

#### **9.2.7 No Recourse**

There shall be no recourse against TxDOT for payment of premiums or other amounts with respect to the insurance required to be provided by Developer hereunder.

#### **9.2.8 Support of Indemnifications**

The insurance coverage provided hereunder by Developer is not intended to limit Developer's indemnification obligations under Section 18.

#### **9.2.9 Commercial Unavailability of Required Coverages**



If, through no fault of Developer, any of the coverages required in this Section 9 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, TxDOT will work with Developer to find commercially reasonable alternatives to the required coverages that are acceptable to TxDOT. Developer shall not be entitled to any increase in any Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. TxDOT shall be entitled to a reduction in the applicable Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the EPDs (or based on other evidence of insurance premiums as of the Proposal Date if the EPDs do not provide adequate information). TxDOT's right to a reduction in Price as set forth in the preceding sentence shall be without regard to the insurance costs expended by the Developer for the less than equivalent coverage or on other insurance required under this Section 9.

### **9.3 Prosecution of Claims**

Unless otherwise directed by TxDOT in writing, Developer shall be responsible for reporting and processing all potential claims by TxDOT or Developer against the insurance required to be provided under this Section 9. Developer agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of TxDOT, whether for defense or indemnity or both. TxDOT agrees to promptly notify Developer of TxDOT's incidents, potential claims, and matters which may give rise to an insurance claim by TxDOT, to tender its defense or the claim to Developer, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

### **9.4 Commencement of Work**

Developer shall not commence Work under this Agreement until it has obtained the insurance required under this Section 9, has furnished original certificates of insurance evidencing the required coverage as required under Section 9.2.2 and such insurance has been approved in writing by TxDOT and Developer shall not allow any Subcontractor (or shall such Subcontractor be entitled) to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by Developer. No delay in securing such insurance, certificates of insurance or approvals shall extend any time period or Completion Deadline or provide Developer any other relief or entitlement for a Change Order.

### **9.5 TxDOT's Right to Remedy Breach by Developer**

If Developer or any Subcontractor fails to provide insurance as required herein, TxDOT shall have the right, but not the obligation, to purchase such insurance or to suspend Developer's right to proceed until proper evidence of insurance is provided. Any amounts paid by TxDOT shall, at TxDOT's sole option, be deducted from amounts payable to Developer or reimbursed by Developer upon demand, with interest thereon from the date of payment by TxDOT to the reimbursement date, at the maximum rate allowable



under applicable Law. Nothing herein shall preclude TxDOT from exercising its rights and remedies under Section 16 as a result of the failure of Developer or any Subcontractor to satisfy the obligations of this Section 9.

#### **9.6 Disclaimer**

Developer and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

## **SECTION 10. TITLE; PROJECT SITE SECURITY; MAINTENANCE DURING AND AFTER CONSTRUCTION**

### **10.1 Title**

Subject to the provisions of Section 21.7 and Section 21.8 with respect to intellectual property rights, Developer warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for TxDOT for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to a Project Site shall pass to TxDOT, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by TxDOT to Developer of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, with respect to each Pilot System and Project Segment, Developer shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until the relevant Final Acceptance Date for such Pilot System or Project Segment, as applicable, or until Developer is removed from the Project.

### **10.2 Project Site Security**

Developer shall provide appropriate security for each Project Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on each Project Site, whether owned by Developer, TxDOT, or any other Person.

### **10.3 Maintenance During Construction**

**10.3.1** With respect to each Pilot System and Project Segment, Developer shall be responsible for maintenance of the Work and the Project Site in accordance with TP Sections 2.2.10, 8.7, and 8.8 at all times prior to System Acceptance of that Pilot System or Project Segment, as applicable. Developer shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project that is injured or damaged prior to the date Developer's maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to TxDOT, except to the extent that TxDOT is responsible for such costs in accordance with the express terms of this Agreement. Developer, at its cost, shall also have sole responsibility during such periods for rebuilding, repairing and restoring all other property within the Final ROW whether owned by Developer, TxDOT or any other Person.

**10.3.2** If insurance proceeds with respect to any loss or damage for which Developer is responsible for the rebuilding, repair or restoration thereof are paid to TxDOT, then TxDOT shall arrange for such proceeds to reimburse Developer as repair or

replacement work is performed by Developer to the extent that TxDOT has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Developer shall not be a condition precedent to Developer's obligation to perform such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by TxDOT.

## **10.4 Maintenance Obligations After System Acceptance**

### **10.4.1 Developer's Obligation to Maintain and Repair**

During the Maintenance Term, as the same may be extended by any Maintenance Option Term, Developer shall be responsible for all maintenance of the Work and the System (including each Pilot System and Project Segment), and shall keep the same in good working order and condition, performing all preventative maintenance and routine maintenance and making all adjustments, repairs, rehabilitations, reconstructions, and replacements necessary to keep the System in operation in accordance with the System Performance Requirements set forth in TP Section 4 at all times, including carrying out the approved Maintenance Plan developed pursuant to Section 10.4.2 below, scheduling and completing routine cleaning, inspection and servicing of all System components, provision and timely replenishment of all spares, supplies and consumables, and performance of scheduled preventative maintenance and corrective maintenance as required in the Contract Documents. Developer shall maintain, rebuild, repair, restore or replace all Work, including Design Documents, Construction Documents, Software, Hardware, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction or operation of the Project that is injured or damaged prior to the date Developer's maintenance responsibility ends, regardless of who has title thereto under the Contract Documents and regardless of the cause of the damage or injury, at no additional cost to TxDOT, except to the extent that TxDOT is responsible for such costs in accordance with the express terms of this Agreement. Developer acknowledges and agrees that the maintenance of the civil and structural portions of the System, including gantries, signs on tolling zone gantries, dynamic (or similar) message signs (including their structures and mounts) barriers (not including flexible delineators) that are installed or modified by Developer in connection with the System, and pavement installed or modified by Developer for the System to the extent that System sensors are located within such pavement are expressly included within its maintenance and repair obligations under this Section 10.4.

### **10.4.2 Maintenance Plan and Procedures**

**10.4.2.1** For each Pilot System and Project Segment, Developer shall prepare and provide TxDOT with a proposed written standard maintenance plan and procedures, including standards of performance with which Developer and its employees and agents shall strictly comply (the "Maintenance Plan"). The Maintenance Plan shall include and cover all procedures of every kind necessary for the maintenance and repair of the System as specified in TP Section 4.5.2. Developer shall develop procedures satisfactory to TxDOT, in its sole discretion. Each Maintenance Plan shall also include a plan for inventory management and control, including all activities required to maintain an

adequate supply of materials, supplies, spares, parts and equipment to maintain the System at all times. Once accepted, such Maintenance Plan shall be subject to change in whole or in part, at any time, at the sole discretion of TxDOT pursuant to Section 10.4.2.3 hereof.

**10.4.2.2** Developer shall furnish to TxDOT the proposed Maintenance Plan for each Pilot System and Project Segment for TxDOT's review no later than 120 Days prior to the date of the applicable Pilot System Acceptance Deadline or Project Segment System Acceptance Deadline established pursuant to the then-current applicable Project Schedule. TxDOT shall conduct its review within 15 Days of receipt thereof. To the extent that TxDOT objects to parts of the Maintenance Plan or directs changes therein, Developer shall satisfy such objections and accommodate such change requests. Developer shall submit the revised proposed Maintenance Plan for TxDOT's review within 15 Days of receipt of TxDOT's comments, whereupon TxDOT shall review the revised Maintenance Plan within 15 Days of receipt thereof. Developer shall continue to satisfy TxDOT's objections and accommodate TxDOT's change requests in similar fashion until TxDOT accepts the Maintenance Plan. Neither the acceptance of any Maintenance Plan nor any direction of changes to a Maintenance Plan shall shift any liability or risk to TxDOT for maintenance of the System or Developer's obligations to comply with the Performance Requirements and the other requirements of the Contract Documents. Failure of TxDOT to respond during any 15 Day review period shall not constitute acceptance thereof. In such event, Developer shall deliver a written notice to TxDOT expressly indicating TxDOT's failure to respond. Should TxDOT fail to respond within 15 Days of receipt of such written notice, such failure shall be deemed TxDOT's acceptance of Developer's submission.

**10.4.2.3** The accepted Maintenance Plan shall be incorporated in a manual entitled "Maintenance Plan and Procedures, Open-Road Toll System." Any changes to the Maintenance Plan approved by TxDOT, in its sole discretion, shall be documented by changes to the manual. The manual will be kept up-to-date in a single bound volume (to the extent practicable) reflecting all provisions in effect at all times for each Pilot System and Project Segment. The Maintenance Plan shall set forth a quality control and quality assurance program that will cause Developer's maintenance and repair of the System to meet all requirements hereof and will establish the procedures and methods of operation most likely to achieve quality and performance at minimum cost.

### **10.4.3 Additional Maintenance Responsibilities**

**10.4.3.1** Developer shall collect and analyze data including System assurance data ("System Assurance Monitoring") and System Functional Availability data, and perform diagnostic analysis of failures and trend analysis.

**10.4.3.2** Developer shall report monthly on System activities, including operating statistics and System accuracy and Functional Availability, inventory, and other information as requested by TxDOT. Developer shall keep detailed maintenance records and inventory data to permit TxDOT to ascertain Developer's compliance with the Contract Document requirements and shall furnish copies of such documents upon request. The

maintenance records shall include a summary of interruptions to normal Functional Availability and accuracy, explaining the duration and cause of such interruption. The procedures and forms for such recordkeeping for each Pilot System and Project Segment shall be provided by Developer and approved by TxDOT in advance and as a condition to any Final Acceptance thereof. At a minimum, the monthly management reports shall include a summary of the month's activities, highlighting any special events and incidents, a summary of performance achieved, an accuracy and Functional Availability report, and such other information as may be required by the Contract Documents or requested by TxDOT.

**10.4.3.3** Developer shall develop a capital asset replacement program, including capital asset condition monitoring and reporting thereon.

**10.4.3.4** Developer shall monitor the System from a security perspective, respond to emergencies, and report security issues and incidents to appropriate authorities.

**10.4.3.5** Developer shall train new maintenance and supervisory personnel prior to transition to maintenance of the System by TxDOT as specified in Section 10.4.5.1.

**10.4.3.6** Developer shall be responsible for configuration management activities throughout the Maintenance Term for all System elements, including Hardware, Software and documentation, and support and maintain all System Software.

**10.4.3.7** Developer shall make no change in the design or configuration of the System as accepted by TxDOT without the express written consent of TxDOT, in its sole discretion.

#### **10.4.4 Corrective Action**

**10.4.4.1** If the minimum System Functional Availability performance levels defined in Table 1 of the TP or the System Performance Requirements defined in Table 5 of the TP are not met for any calendar quarter (3 month period), or performance records indicate either will not be met, Developer shall promptly notify TxDOT in writing and undertake a study to determine the causes and propose a plan to correct the problem. Developer shall take immediate corrective action to mitigate the cause at Developer's sole cost and expense. The foregoing shall not modify, alter, limit or negate any of TxDOT's rights or Developer's obligations under Section 16.5.

**10.4.4.2** In addition to its rights under Section 10.4.4.1 above, (i) within 7 Days of receipt by Developer of notice from TxDOT specifying a failure of any aspect of the System or Developer's failure to perform the maintenance Work as required hereunder, or (ii) at any time, in the event of an emergency requiring immediate curative action, a situation which poses a significant safety risk to the public or significant potential revenue loss (as determined by TxDOT, in its sole discretion), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary work,

remedy, and the costs thereof shall be borne by Developer. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Developer pursuant to this Agreement and/or from any letter of credit then held by TxDOT. The foregoing shall not limit or modify TxDOT's rights to any Stipulated Damages that may arise out of such failure.

#### **10.4.5 Transfer of Maintenance to TxDOT at End of Maintenance Period**

##### **10.4.5.1 Training and Personnel**

Developer shall provide training of TxDOT personnel or the personnel of a TxDOT-designated organization to maintain all Project Segments to be initiated at least 6 months prior to the end of the Maintenance Term for any Project Segment. Staff numbers and positions and training procedures will be in accordance with Developer's staffing plan in the Maintenance Plan then in effect. Developer shall design its classroom and on-the-job training with the objective of providing sufficient maintenance personnel competent to maintain the System. Developer shall provide qualified instructors who will prepare the course material including the latest modifications, equipment changes, maintenance updates, and any revised maintenance procedures, and may enlist major subcontractors or suppliers to augment Developer's own trainers. Literature, training aids, and equipment used in training shall be turned over to TxDOT at the termination of the Maintenance Term for each Project Segment. The training shall be designed with the objective that within 3 months of the start of the training, but no later than 90 Days prior to the end of the Maintenance Term, there shall be sufficient quantity of personnel trained so that the Project Segment can be completely run without Developer's personnel. It shall include classroom and hands-on experience.

##### **10.4.5.2 Continued Stocking of Parts**

At the end of the Maintenance Term for each Project Segment, the spare parts, equipment, expendables and consumables inventory shall be fully stocked and complete (including substitution with suitable alternatives for any such spare parts, equipment and expendables that are obsolete) to the extent required by the Contract Documents, or as may be modified. In the event that such inventory is not fully stocked and complete, an amount equal to the cost of restocking and completing such inventory shall be deducted from any payments, if any, due Developer and/or from any letter of credit then held by TxDOT. To the extent that the cost of restocking and completing such inventory incurred by TxDOT exceeds the payments due Developer, such differential shall be paid by the Developer to TxDOT within 15 Days after the date of termination of the Maintenance Term.

#### **10.4.5.3 Condition of Project Segment at End of Maintenance Term**

For each Project Segment, as of the date of expiration of the applicable Maintenance Term, the System shall be in a state of good operating condition and repair. Any capital asset replaced within one year prior to handover shall have a minimum of a one-year warranty in accordance with Section 11.2. Any extant warranty for any component of such Project Segment shall be transferred to TxDOT. Failure to maintain the assets in a state of good operating condition and repair shall be cause for termination, and/or for drawing against the bonds and letter of credit provided by Developer as security for Developer's performance. For each Project Segment, not more than 120 Days prior to expiration of the Maintenance Term for such Project Segment, TxDOT and Developer shall conduct an inspection of such Project Segment and conduct such tests of the System in accordance with the procedures set forth in TP Section 4.5.11 and shall produce a punch-list of those items requiring Maintenance Work prior to transfer of the maintenance responsibility for such Project Segment to TxDOT.

## SECTION 11. WARRANTIES

### 11.1 Warranties

#### 11.1.1 Warranty

(a) Except for Software, Developer warrants that (a) all design, installation, integration and maintenance Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, (b) the Project shall be free of defects, including design Errors, except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, (c) the Project shall be fit for use for the intended function, (d) materials, equipment, and Hardware furnished under the Contract Documents shall be of good quality and new, and (e) the Work shall meet all of the requirements of, and perform in accordance with, the Contract Documents.

(b) Developer warrants that (i) all Software shall be prepared in a workmanlike manner and with professional diligence and skill, (ii) all Software will function on the machines and with operating systems for which they are designed, (iii) all Software will conform to the specifications and functions set forth in the Contract Documents, including the Technical Provisions and Project Segment Supplements relating thereto; and (iv) any third party software utilized by Developer in connection with the System, when properly installed, will function together with the Software in an integrated manner to provide TxDOT with the benefits contemplated by this Agreement.

(c) WITH RESPECT TO THE SOFTWARE ONLY, WARRANTIES EXPRESSED IN THE CONTRACT DOCUMENTS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### 11.1.2 Warranty Term

The Warranty term for each Pilot System and/or Project Segment shall commence upon the applicable System Acceptance thereof. Subject to extension under Section 11.2, the Warranties shall remain in effect until one year after the Final Acceptance Date for such element. The Warranty term for elements of the Project that will be owned by Persons other than TxDOT, RMAs and Other TxDOT Developers (such as Utility Owners) shall commence as of the date of acceptance thereof by such Persons and shall end one year thereafter. If TxDOT determines that any of the Work has not met the standards set forth in this Section 11.1 at any time within the Warranty period, then Developer shall correct such Work as specified below, even if the performance of such corrective work extends beyond the stated warranty period. The Pilot System Prices and all Project Segment Prices are deemed to include full compensation to Developer for all warranty obligations hereunder.



### **11.1.3 Remedy**

Within 7 Days of receipt by Developer of notice from TxDOT specifying a failure of any of the Work to satisfy the Warranties or of the failure of any Subcontractor representation, warranty, guarantee or obligation which Developer is responsible to enforce, Developer and TxDOT shall mutually agree when and how Developer shall remedy such violation; provided, however, that (i) in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Developer shall implement such action as it deems necessary and shall notify TxDOT in writing of the urgency of a decision; and (ii) the foregoing 7 Day period shall not limit or modify TxDOT's rights to pursue and obtain Stipulated Damages as set forth in this Agreement during such 7 Day period. Developer and TxDOT shall promptly meet in order to agree on a remedy. If Developer does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Developer and TxDOT fail to reach such an agreement within such 7 Day period ~~(or immediately in the case of emergency conditions, a situation which poses~~ a significant safety risk or significant potential revenue loss, as determined by TxDOT, in its sole discretion), TxDOT shall have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Developer. Alternatively, TxDOT may deduct the amount of such costs and expenses from any sums owed by TxDOT to Developer pursuant to this Agreement and/or from any letter of credit then held by TxDOT. TxDOT may agree to accept Nonconforming Work in accordance with Section 5.6.2.

### **11.1.4 Permits and Costs**

Developer shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with Warranty Work. Developer shall bear all costs of Warranty Work, including additional testing and inspections. Developer shall pay to TxDOT the expenses incurred by TxDOT for independent quality assurance and/or quality control with respect to the Warranty Work and any lost revenue arising from or relating to such Warranty Work (provided, however, that Developer's liability for revenue loss resulting from Warranty Work shall be as set forth in Section 17.4), in each case, within 10 Days after Developer's receipt of invoices therefore (including, subject to the limitations in Section 17.6). Alternatively, TxDOT may deduct such amounts from any sums owed by TxDOT to Developer pursuant to this Agreement and/or from any letter of credit then held by TxDOT.

## **11.2 Applicability of Warranties to Re-Done Work**

### **11.2.1 Original Warranty Work**

The Warranties shall apply to all Work re-done, repaired, corrected or replaced pursuant to the terms of this Agreement. Following acceptance by TxDOT of re-done, repaired, corrected or replaced Work, the Warranties as to each re-done, repaired, corrected or replaced element of the Work shall extend beyond the original warranty period in order that each element of the Project (including redone, repaired, corrected or replaced Work) shall have at least a one year warranty period .

## **11.2.2 Maintenance Warranty Work**

The Warranties shall also apply to all Work re-done, repaired, corrected or replaced by Developer in the performance of its obligation to maintain the Pilot Systems and Project Segments during their respective Maintenance Terms, as the same may be extended by any Maintenance Options. The Warranties as to each such re-done, repaired, corrected or replaced element of the Work during the Maintenance Term shall remain in effect until one year after acceptance by TxDOT of such element of the Work.

## **11.3 Subcontractor Warranties**

### **11.3.1 Warranty Requirements**

Without in any way derogating the Warranties and Developer's own representations and warranties and other obligations with respect to all of the Work, Developer shall obtain from all Subcontractors and cause to be extended to TxDOT, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, installation, integration, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all TxDOT inspections, tests and approvals, and (b) shall run directly to and be enforceable by Developer and/or TxDOT and their respective successors and assigns. Developer hereby assigns to TxDOT all of Developer's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by Developer from any of its Subcontractors. To the extent that any Subcontractor warranty or guaranty would be voided by reason of Developer's negligence in incorporating material or equipment into the work, Developer shall be responsible for correcting such defect.

### **11.3.2 Enforcement**

Upon receipt from TxDOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Developer shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Developer's other obligations hereunder. TxDOT's rights under this Section 11.3.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of Developer's relevant Warranty (including extensions thereof under Section 11.2). Until such expiration, the cost of any equipment, Hardware, Software, material, labor (including re-engineering) or shipping shall be for the account of Developer if such cost is covered by such a representation, warranty, guaranty or obligation and Developer shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors. The foregoing provisions concerning Subcontractor warranties are intended to provide TxDOT with an additional Person and source in which to seek recourse if Work fails to meet the requirements of the Contract Documents. In no event shall the foregoing provisions be interpreted to modify, limit, discharge, release, negate or waive the Warranties or Developer's obligations with respect to the Work, and Developer shall not be entitled to use the existence of

Subcontractor warranties as a defense to Developer's obligations under this Agreement and the other Contract Documents.

#### **11.4 No Limitation of Liability**

Subject to Section 17.6, the foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, willful misconduct or fraud; provided, however, that upon expiration of the Warranties, Developer shall have no further liability hereunder for patent construction defects.

#### **11.5 Damages for Breach of Warranty**

Subject to Section 17.6 and in addition to TxDOT's other rights and remedies hereunder, at law or in equity, Developer shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work, including the cost of performance of such obligations by others; provided, however, that Developer's liability for revenue loss resulting from the failure of the System to perform in accordance with the Performance Requirements shall be as set forth in Section 17.4.

## **SECTION 12. PAYMENT FOR SERVICES**

### **12.1 Price**

#### **12.1.1 Pilot System Price**

As full compensation for the Work and all other obligations to be performed by Developer under the Contract Documents with respect to the Pilot Systems, TxDOT shall pay to Developer as set forth herein, for each Pilot System for which an NTP has been issued, the lump sum amounts set forth in Exhibit U-1 as the "Total Capital Price (Subtotals A, B, C, D)" (each a "Pilot System Price"). The term "Pilot System Price" as used herein shall be subject to adjustment from time to time to account for Change Orders. The Pilot System Prices shall be increased or decreased only by a Change Order issued in accordance with Section 13 or by an Agreement amendment. The Pilot System Prices shall be paid in accordance with Section 12.2. Notwithstanding the foregoing, should TxDOT identify any alternative Pilot System, the Pilot System Price for such Pilot System(s) shall be determined pursuant to the procedures applicable to determining Project Segment Prices as set forth in Section 2.1.1.2 and Section 2.1.1.3.

#### **12.1.2 Project Segment Prices**

##### **12.1.2.1 Hypothetical Project Segment Scenarios**

Exhibit U-2 sets forth the Hypothetical Project Segment Scenario Prices. The Parties agree that each of the Hypothetical Project Segment Scenario Prices provides a reasonable framework for establishing the Project Segment Price for any Project Segment designated by TxDOT.

##### **12.1.2.2 Determination of Project Segment Prices**

TxDOT shall notify Developer of its intent to issue a Project Segment Supplement for a Project Segment as provided in Section 2.1.1.2, and the Project Segment Price for each Project Segment shall be determined pursuant to the guidelines and procedures set forth in Section 2.1.1.3. Once determined, the Project Segment Prices shall be increased or decreased only by a Change Order issued in accordance with Section 13 or by an Agreement amendment. The Project Segment Prices shall be paid in accordance with Section 12.2.

#### **12.1.3 Maintenance Prices**

##### **12.1.3.1 Pilot System Maintenance Prices**

As full compensation for the Pilot System Maintenance Work, commencing upon Pilot System Final Acceptance, TxDOT shall pay to Developer as set forth herein, for each Pilot System for which an NTP has been issued, the flat, lump sum annual Maintenance Price set forth in Exhibit U-3 as the "Tolling Zone Maintenance" and

"Annual Performance Audit" prices plus a one-time payment for each Pilot System identified as the "End of Term Maintenance Activities" (each, a "Pilot System Maintenance Price"). The Pilot System Maintenance Price shall be subject to annual price adjustment in accordance with Section 12.1.4 (prior to issuance of the NTP for such Pilot System) and Section 12.1.5 (after issuance of the NTP for such Pilot System), below. The Pilot System Prices shall be paid in accordance with Section 12.2. Notwithstanding the foregoing, should TxDOT identify any alternative Pilot System, the Pilot System Maintenance Price for such Pilot System(s) shall be determined pursuant to the procedures applicable to determining Project Segment Maintenance Prices as set forth in Section 2.1.1.2 and Section 2.1.1.3.

#### **12.1.3.2 Hypothetical Project Segments**

Exhibit U-4 sets forth the Hypothetical Project Segment Scenario Maintenance Prices. The Parties agree that such lump sum and unit prices provide a reasonable framework for establishing the Project Segment Maintenance Prices.

#### **12.1.3.3 Determination of Project Segment Maintenance Prices**

Project Segment Maintenance Prices for any Project Segments shall be determined as provided in Section 2.1.1.3. Payment of the Project Segment Maintenance Price for a Project Segment shall commence upon Project Segment Final Acceptance for such Project Segment. The Project Segment Maintenance Prices shall be subject to annual price adjustment in accordance with Section 12.1.5 (after issuance of the NTP for such Project Segment), below. The Project Segment Maintenance Prices shall be paid in accordance with Section 12.2.

#### **12.1.4 Adjustment of Prices Before NTP Issued.**

The Pilot System Prices for Pilot Systems for which an NTP has not yet been issued, the Pilot System Maintenance Prices and the prices to be used for establishing the Project Segment Price and Pilot System Maintenance Price for any future Project Segment Supplements shall be adjusted annually commencing on the second anniversary of this Agreement (and continuing until such time as an NTP has been issued) to account for increases or decreases in the costs of labor and materials from the costs as of the Base Month. These adjustments will be made as specified in this Section 12.1.4, regardless of the actual variations in cost of labor and materials for such items, and shall be Developer's sole and exclusive remedy for Pilot System or Project Segment cost variations over the term of this Agreement. Developer agrees that the economic price adjustments pursuant to this Section 12.1.4 shall be the sole basis for adjusting the Pilot System Prices, the Pilot System Maintenance Prices, the Hypothetical Project Segment Scenario Prices and the Hypothetical Project Segment Scenario Maintenance Prices for Pilot Systems and Project Segments for which an NTP has not yet been issued to reflect inflation and/or market conditions. Developer warrants that the prices contained in its Proposal do not include any contingency to cover anticipated increased costs of performance due to price inflation following the Base Month.

(a) Economic price adjustments shall be based on the following indices:

(i) Labor Amounts shall be adjusted in accordance with the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Installation Workers for the Dallas – Fort Worth metropolitan area (“all items”) as published by the U.S. Department of Labor, Bureau of Labor Statistics.

(ii) Material Amounts shall be adjusted in accordance with an index, which shall be a composite of the Electrical Machinery and Equipment Index (WPU 117) and the Metals and Metal Products Index (WPU 10), as published by the U.S. Bureau of Labor Statistics. The relative weights of those two indices in determining the composite index shall be calculated by Developer as a result of the average distribution of material prices in the above two index categories, subject to approval by TxDOT.

(b) Beginning with the second anniversary of this Agreement (for application during the third year of this Agreement), the economic price adjustment shall be applied each year to the Pilot System Prices for Pilot Systems for which an NTP has not yet been issued, the Hypothetical Project Segment Scenario Prices set forth in Exhibit U-2, the Pilot System Maintenance Prices set forth in Exhibit U-3 and the Hypothetical Project Segment Maintenance Prices set forth in Exhibit U-4. On or before each anniversary of this Agreement, commencing with the second anniversary, Developer shall deliver to TxDOT a statement showing the adjustment calculations, using a format approved by TxDOT. The adjustment shall be calculated by individually multiplying the original Pilot System Prices for Pilot Systems for which an NTP has not yet been issued, the original Hypothetical Project Segment Scenario Prices set forth in Exhibit U-2, the original Pilot System Maintenance Prices set forth in Exhibit U-3 and the original Hypothetical Project Segment Maintenance Prices set forth in Exhibit U-4, in each case, by a fraction, the numerator of which shall be the most recently published index as of the adjustment date and the denominator of which shall be the index for the Base Month. Notwithstanding the foregoing, the amount of adjustment for each adjustment described in this Section 12.1.4 shall not exceed 5 % in any given year.

(c) In the event that any of the indices referenced in this Section ceases to be published, or the method of calculating the index is materially altered, TxDOT shall select another index to be used in place of the discontinued or altered index, or a method of adjusting the altered index. Any new index shall be comparable to the index which it replaces. Foreign (non-U.S.) indices and/or corrections for trading of currency shall not be eligible for use.

#### **12.1.5 Adjustment of Prices After NTP Issued**

The Pilot System Maintenance Prices and the Project Segment Maintenance Prices shall be adjusted annually commencing on the second anniversary of the Maintenance Base Month (for application during the third year of the applicable Maintenance Term), to account for increases or decreases in the costs of labor and materials from the costs as of the Maintenance Base Month. These adjustments will be

made as specified in this Section 12.1.5, regardless of the actual variations in cost of labor and materials for such items, and shall be Developer's sole and exclusive remedy for Pilot System or Project Segment maintenance cost variations over the course of the Agreement. Developer agrees that the economic price adjustments pursuant to this Section 12.1.5 shall be the sole basis for adjusting the Pilot System Maintenance Prices and the Project Segment Maintenance Prices after an NTP has been issued to reflect inflation and/or market conditions. Developer warrants that the prices contained in its Proposal do not include any contingency to cover anticipated increased costs of performance due to price inflation following the Maintenance Base Month.

(a) Economic price adjustments shall use the same indices as described in Section 12.1.4.

(b) Beginning with the second anniversary of the ~~Maintenance Base Month~~ (for application during the third year of the applicable Maintenance Term), the respective Pilot System Maintenance Price and Project Segment Maintenance Price for each such Pilot System and Project Segment shall be adjusted annually, in each case by a fraction, the numerator of which shall be the most recently published index as of the adjustment date and the denominator of which shall be the index for the Maintenance Base Month. Notwithstanding the foregoing, the amount of adjustment for each adjustment described in this Section 12.1.5 shall not exceed 5% in any given year.

#### **12.1.6 No Duplication**

In no event shall any adjustment pursuant to Section 12.1.4 or Section 12.1.5 be duplicative or result in "double-counting", it being the express intent of TxDOT and Developer that a price that is subject to adjustment pursuant to Section 12.1.4 shall not be eligible for adjustment under Section 12.1.5 and vice versa.

#### **12.1.7 Items Included in Prices**

Developer acknowledges and agrees that, subject only to Developer's rights under Section 13, each Price includes or will include (a) all designs, equipment, materials, Hardware, Software, labor, insurance, letter of credit and bond premiums, home office, jobsite and other overhead, profit and services relating to Developer's performance of its obligations under the Contract Documents (including all Work, equipment, Hardware, Software, supplies, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work; (c) the cost of obtaining all Governmental Approvals (except as specified in Section 2.3.4); (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with Laws to the extent applicable to the Project; (e) payment of any taxes, duties, permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; and (f) compensation for all obligations, risks and contingencies assigned to Developer under the Contract Documents.

## **12.2 Invoicing and Payment**

The following process shall apply to invoicing and payment:

### **12.2.1 Pilot System Price and Project Segment Price Payment Milestones**

TxDOT's payment of the Pilot System Prices and Project Segment Prices shall be made based upon the Milestone Payment Structure set forth in Exhibit F hereto. For each Pilot System, Milestone Payments shall be calculated based upon the Schedule of Pilot System Prices set forth in Exhibit U-1. Milestone Payments for each Project Segment shall be calculated based upon the Schedule of Project Segment Prices set forth as an exhibit to each Project Segment Supplement.

### **12.2.2 Delivery of Milestone Payment Draw Request**

Developer may submit a Draw Request for Milestone Payments not more frequently than monthly. To request a Milestone Payment, Developer shall deliver to TxDOT five copies of a Draw Request in the form attached hereto as Exhibit J and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Draw Request shall be executed by a designated and authorized representative of Developer appointed by Developer to have such authority in accordance with this Agreement. Developer acknowledges that TxDOT may obtain funding for portions of the Work from the federal government, local agencies and other third parties, and Developer agrees to segregate Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. A separate Draw Request shall be required for each Pilot System and Project Segment. Each Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

### **12.2.3 Contents of Milestone Payment Draw Request**

Each Draw Request must contain the following items:

- (a) Draw Request cover sheet;
- (b) Description of the status of all completed Milestones, as of the date of the Draw Request;
- (c) Payments which are then due in accordance with the Milestone Payment Structure, as of the date of the Draw Request;
- (d) A monthly progress report(s) for the applicable Pilot System or Project Segment as of the date of the Draw Request in the format described in TP Section Z;



(e) Certification by the Developer that all Work which is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;

(f) A report of personnel hours for the applicable Pilot System or Project Segment since the prior Draw Request (including a list setting forth all Key Personnel and the hours which they worked during this period);

(g) Draw Request data sheet(s) and supporting documents, as required by TxDOT to support and substantiate the amount requested (based on quantities and unit prices for unit priced Work for each Pilot System and Project Segment), and based on time and materials for Time and Materials Change Orders for each Pilot System and Project Segment,

(h) DBE utilization report in a format reasonably satisfactory to TxDOT for the applicable Pilot System and Project Segment;

(i) An approved and updated Project Schedule for the applicable Pilot System and Project Segment; and

(h) Such other items as TxDOT reasonably requests.

In addition, no Draw Request shall be considered complete unless it: (1) describes in detail the status of completion as it relates to the Project Schedule for the applicable Pilot System and Project Segment; (2) sets forth in detail the related payments which are then due in accordance with the Project Schedule for the applicable Pilot System and Project Segment, as of the end of most recent prior Draw Request; (3) in the case of amounts to be paid on a unit price basis, includes invoices, receipts or other evidence establishing the number of units delivered; (4) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 13.7; and (5) sets forth in detail the amounts paid to Subcontractors (including Suppliers and sub-subcontractors) from the payments made by TxDOT to Developer with respect to the most recent prior Draw Request, including executed unconditional waivers of claims with respect to all amounts so paid.

#### **12.2.4 Draw Request Cover Sheet Contents**

The Draw Request cover sheet shall include the following:

(a) Project number and title;

(b) Pilot System or Project Segment number and title;

(c) Request number (numbered consecutively starting with "1");

(d) Total amount earned to date for the applicable Pilot System and Project Segment, as well as for the overall Project; and

- (e) Authorized signature, title of signer, and date of signature.

#### **12.2.5 Certification by QC/QA Personnel**

Each Draw Request shall include a certificate in the form included in Exhibit J, certifying that:

(a) All Work, including that of designers, Subcontractors, including Suppliers and fabricators, which is the subject of the Draw Request has been checked and/or inspected by the Engineering Professional Services Quality Review Personnel (with respect to Engineering Professional Services) the Civil Construction Quality Acceptance Personnel (with respect to construction Work), the Toll Systems Services Quality Review Personnel (with respect to Toll Systems Services) and the Maintenance Quality Acceptance Personnel (with respect to Maintenance Work);

(b) Except as specifically noted in the certification, all Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Laws;

(c) The Engineering Professional Services Quality Program, the Civil Construction Quality Program, and the Toll Systems Services Quality Program and all of the measures and procedures provided therein are functioning properly and are being followed in all respects;

(d) The Engineering Professional Services percentages, construction percentages and Toll Systems Services percentages indicated are accurate and correct; and

(e) The Milestone to which the Draw Request relates has been achieved.

#### **12.2.6 Maintenance Price Payments**

Except for the portion of the Maintenance Price identified in Exhibit U-3 (for the Pilot Systems) or in any Project Segment Supplement as the price for "End of Term Maintenance Activities" (which amount shall be paid as part of the Final Maintenance Payment pursuant to Section 12.5), the annual Maintenance Price for each Pilot System and Project Segment shall be paid in arrears, in equal monthly installments, commencing upon the applicable Pilot System Final Acceptance or Project Segment Final Acceptance.

#### **12.2.7 Delivery of Maintenance Price Draw Request**

On or about the fifth business Day of each month, Developer shall deliver to TxDOT five copies of a Maintenance Price Draw Request in the form attached hereto as Exhibit S and meeting all requirements specified herein except as otherwise approved in writing by TxDOT. Each Maintenance Price Draw Request shall be executed by a designated and authorized representative of Developer appointed by Developer to have

such authority in accordance with this Agreement. Developer acknowledges that TxDOT may obtain funding for portions of the Work from the federal government, local agencies and other third parties, and Developer agrees to segregate Maintenance Price Draw Requests for all such Work in a format reasonably requested by TxDOT and with detail and information as reasonably requested by TxDOT. A separate Maintenance Price Draw Request shall be required for each Pilot System and Project Segment. Each Maintenance Price Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process.

#### **12.2.8 Contents of Maintenance Price Draw Request**

Each Maintenance Price Draw Request must contain the following items:

- (a) Maintenance Price Draw Request cover sheet;
- (b) Monthly Maintenance Report as described in Section 4.5.7 of the Technical Provisions,
- (c) Certifications in form acceptable to TxDOT by the Project Manager and Maintenance Manager that the Work conforms to the approved and updated (if applicable) Maintenance Plan,
- (d) Monthly report of personnel hours (including a list setting forth all Key Personnel and the hours which they worked during this period),
- (e) Maintenance Price Draw Request data sheet(s), documents and summary that support and substantiate the Performance Requirements have been met,
- (f) Certification in form acceptable to TxDOT by the TSSQM that the MOMS is performing according to required specifications (to be provided with every 3<sup>rd</sup> Maintenance Price Draw Request),
- (g) Submitted and approved System updates, As-Built Documents and changes to the maintenance Plan and Procedures, Open Road Toll System manual if applicable; and
- (h) Sealed envelope of current updated Software Source Code addressed to the Software Source Code Escrow holder, if applicable.

#### **12.2.9 Report of Personnel Hours**

With each Draw Request and Maintenance Price Draw Request, Developer shall report the total monthly labor hours for design, construction and maintenance personnel used in connection with the Work which is the subject of the Draw Request or Maintenance Price Draw Request.

### **12.2.10 Draw Request and Maintenance Price Draw Request Data Sheets**

Draw Request and Maintenance Price Draw Request data sheets shall be subdivided into Developer-designated Project elements and shall be attached to a Project-wide report and Draw Request/ Maintenance Price Draw Request data sheet. It is TxDOT's intent to base payments for Work other than Maintenance Work on the achievement of Milestones as provided in the Milestone Payment Structure (except as expressly set forth in this Agreement), except that cost plus or unit price Change Order work or items to be paid from an allowance may be paid based upon measured quantities. Developer shall present the format of the Draw Request/Maintenance Price Draw Request data sheets for TxDOT approval at least 20 business days prior to the submittal of the first Draw Request and Maintenance Price Draw Request. Once the Draw Request format has been approved by TxDOT, the format shall not change without TxDOT's prior written approval. Upon commencement of the Maintenance Term, the annual price for ~~Maintenance Work will be paid in equivalent monthly installments, provided, however, that~~ TxDOT intends to pay the annual cost of the Warranty Bond, the Maintenance Payment Bond, the Maintenance Performance Bond, insurance premiums incurred for the relevant year of the Maintenance Term and the cost of providing the Letter of Credit during such year of the Maintenance Term on an actual cost basis as incurred, without markups, profit or overhead, as provided in Section 12.3.4.2; provided, further, that Developer shall not be entitled to reimbursement for any increase in the actual cost of bond or insurance premiums or Letter of Credit fees attributable to claims or loss experience of any Developer-Related Entity, whether under an insurance policy, bond or letter of credit required for the Project or in connection with any unrelated work or activity of Developer-Related Entities. Developer shall bear the burden of proving that increases in such costs are not the result of adverse changes in Developer's financial condition, Developer risk rating or experience or the acts, omissions, negligence or misconduct of Developer or any member of the Developer-Related Entity

### **12.2.11 Payment by TxDOT**

Within fifteen business days after TxDOT's receipt of a complete Draw Request or Maintenance Price Draw Request, TxDOT will review the Draw Request or Maintenance Price Draw Request, as applicable, and all attachments and certificates thereto for conformity with the requirements of the Contract Documents, and shall notify Developer of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request or Maintenance Price Draw Request. Developer may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by TxDOT and satisfaction of the requirements of the Contract Documents related thereto. Within five business days after TxDOT's approval of a Draw Request or Maintenance Price Draw Request, as applicable, TxDOT shall pay Developer the amount of the Draw Request or Maintenance Price Draw Request, as applicable, approved for payment less any applicable Retainage and less any amounts which TxDOT is otherwise entitled to withhold or deduct with respect to any Pilot System and/or Project Segment. With respect to any Change Order Work to be performed on a Time and Materials basis, in no event shall Developer be

entitled to (a) payment for any activity related to a Pilot System or a Project Segment, as applicable, in excess of the value of the activity times the completion percentage of such activity (for non-unit priced Work), or (b) aggregate payments hereunder in excess of the overall completion percentage for the applicable Pilot System or Project Segment times the applicable Price (for non-unit-priced Work) for such Pilot System or Project Segment, as applicable.

## **12.3 Deductions, Exclusions and Limitations on Payment; Payment for Certain Items**

### **12.3.1 Retainage**

**12.3.1.1** On an individual Pilot System and Project Segment basis, TxDOT shall withhold funds (the "Retainage") from each payment of the Pilot System Price or Project Segment Price to be made to Developer for Work necessary to achieve Final Acceptance. The Retainage shall be an amount equal to 5% of the payment amount, after subtracting any amounts owing for Engineering Professional Services.

**12.3.1.2** No portion of the Retainage shall be released with respect to an individual Pilot System or Project Segment unless and until all of the following conditions have been met: (a) no Liquidated Damages, Stipulated Damages and/or any other amounts shall then be payable to TxDOT as to such Pilot System or Project Segment; (b) Developer shall have established to TxDOT's reasonable satisfaction that no Liquidated Damages, Stipulated Damages and/or any other amounts are anticipated to be payable to TxDOT as to such Pilot System or Project Segment; (c) no Liquidated Damages, Stipulated Damages and/or any other amounts shall then be payable to TxDOT as to any other Pilot System or Project Segment; (d) Developer shall have established to TxDOT's reasonable satisfaction that no Liquidated Damages, Stipulated Damages and/or any other amounts are anticipated to be payable to TxDOT as to any other Pilot System or Project Segment ; (e) Developer shall have applied in writing for such release; (f) no Event of Default has occurred and no event has occurred that, with the passage of time or the giving of notice, would constitute an Event of Default; and (g) such release shall have been approved in writing by each Surety.

**12.3.1.3** Provided that Developer has satisfied the conditions set forth in Section 12.3.1.2 above, TxDOT agrees to release 20% of the Retainage then held by TxDOT with respect to a Pilot System or a Project Segment within 30 Days after achievement of Punch List Acceptance of such Pilot System or Project Segment, subject to the following terms and conditions. The amount to be released shall be reduced by 150% of the amounts estimated by TxDOT that are necessary to pay (a) amounts applied to the payment of Liquidated Damages, Stipulated Damages and other amounts payable to TxDOT for that Pilot System or Project Segment plus any other Pilot System and Project Segment, (b) amounts applied to the payment of Losses incurred by TxDOT for which Developer is responsible with respect to any Pilot System and Project Segments, regardless of the source of the Retainage, (c) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices from Subcontractors, laborers, Utility Owners or other third parties relating to the Project,

and (d) the estimated cost of repairing any Nonconforming Work or otherwise remedying any breach of contract or warranty by Developer with respect to any Pilot System and Project Segments, regardless of the source of the Retainage. TxDOT shall hold the balance of the Retainage with respect to a Pilot System or Project Segment until the date the Final Payment of the Price relating to such Pilot System or Project Segment is due hereunder. At such time and provided that Developer has satisfied the conditions set forth in Section 12.3.1.2 above, TxDOT shall release to Developer all remaining Retainage other than 150% of the amounts estimated by TxDOT that are necessary to pay (a) amounts applied to the payment of Liquidated Damages, Stipulated Damages and any other amounts payable to TxDOT for that Pilot System or Project Segment plus any other Pilot System and Project Segment, (b) amounts applied to the payment of Losses incurred by TxDOT with respect to that Pilot System or Project Segment plus any other Pilot System and Project Segment for which Developer is responsible, (c) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices from Subcontractors, laborers, Utility Owners or other third parties relating to the Project, and (d) the estimated cost of repairing any Nonconforming Work or otherwise remedying any breach of contract or warranty by Developer with respect to that Pilot System or Project Segment plus any other Pilot System and Project Segment. Final payment of such Retainage not applied to the matters identified above shall be made upon Developer's showing, to TxDOT's reasonable satisfaction, that all such matters have been resolved, including delivery to TxDOT of a certification representing that there are no outstanding claims of Developer or any claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or other third party with respect to the Work.

**12.3.1.4** At any time prior to Developer's satisfaction of the conditions to the release of Final Payment of the Price with respect to a Pilot System or Project Segment, TxDOT may withdraw from the Retainage account and apply any funds withheld as Retainage to satisfy any of the items described in clauses (a)-(d) of Section 12.3.1.3. In such event, Developer shall, within 10 Days thereafter, replenish the Retainage by delivering to TxDOT sufficient funds to bring the total Retainage to the amount required hereunder.

**12.3.1.5** Developer shall have the right to substitute a letter of credit for all or any portion of the Retainage, provided that the conditions set forth in Section 12.3.1.2 above have been satisfied and the letter of credit shall (a) be an unconditional, irrevocable direct pay letter of credit payable immediately upon presentation by TxDOT, issued by a Letter of Credit Bank, (b) be in the amount of 100% of the required Retainage amount, (c) be in a form approved by TxDOT, in its sole discretion, and (d) name TxDOT as the payee. In the event of a TxDOT draw on such letter of credit reducing the amount available to be drawn thereunder to compensate TxDOT for any of the items described in clauses (a)-(d) of Section 12.3.1.3, within 10 Days thereafter, Developer shall cause the available amount of the letter of credit to be reinstated to the full amount of the Retainage required hereunder, or shall deliver to TxDOT sufficient immediately available funds to bring the total of the available amount under the letter of credit plus the Retainage funds held by TxDOT to an amount equaling the total Retainage required hereunder. Should a Letter of Credit Bank's credit rating fall below that required pursuant to Section

8.2, Developer shall provide a substitute retainage letter of credit from a financial institution meeting such requirements within 15 Days. Failure to provide such substitute, or to reinstate the available amount of the letter of credit after any draw as provided above, shall entitle TxDOT to draw the full amount of such existing letter of credit and hold the same as Retainage.

### **12.3.2 Deductions**

In addition to the deductions provided for under Section 12.3.1, TxDOT may deduct from each payment and any Final Payment the following:

(a) Any TxDOT or third party Losses for which Developer is responsible hereunder or any Liquidated Damages or Stipulated Damages as to any Pilot System and/or Project Segment which have accrued as of the date of the application for payment or which are anticipated to accrue based on the applicable System Acceptance, Punch List Acceptance and Final Acceptance dates shown in the current Project Schedule(s) for each Pilot System and Project Segment;

(b) If a notice to stop payment, claim or Lien is filed with TxDOT as to any Pilot System and/or Project Segment due to the Developer's failure to pay for labor or materials used in the work, money due for such labor or materials will be withheld from payment to the Developer;

(c) Any sums expended by or owing to TxDOT as a result of Developer's failure to maintain the as-built drawings as to any Pilot System and/or Project Segment,

(d) Any sums expended by TxDOT in performing any of Developer's obligations under this Agreement as to any Pilot System and/or Project Segment which Developer has failed to perform, and

(e) Any other sums which TxDOT is entitled to recover from Developer as to any Pilot System and/or Project Segment under the terms of this Agreement.

The failure by TxDOT to deduct any of these sums from a progress payment shall not constitute a waiver of TxDOT's right to such sums.

All amounts owing by Developer to TxDOT under this Agreement shall earn interest from the date on which such amount is owing at the lesser of (i) 12% per annum or (ii) the maximum rate allowable under applicable Law.

### **12.3.3 Unincorporated Materials**

TxDOT will not pay for materials not yet incorporated in the Work other than precast concrete, reinforcing steel, structural steel, precast concrete members, stone,

gravel, sand or other non-perishable materials that will be permanently incorporated in the Work unless all of the following conditions are met:

**12.3.3.1** Material shall be (1) delivered to the applicable Project Site, (2) delivered to Developer and promptly stored by Developer in bonded storage at a location approved by TxDOT in its sole discretion, or (3) stored at a Supplier's fabrication site, which must be a bonded commercial location approved by TxDOT, in its sole discretion. Developer shall submit certified bills for such materials with the invoice, as a condition to payment for such materials. TxDOT shall allow only such portion of the amount represented by these bills as, in its sole opinion, is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by TxDOT, Developer shall accept responsibility for and pay all personal and property taxes that may be levied against TxDOT by any state or subdivision thereof on account of such storage of such material.

**12.3.3.2** All such materials so accepted shall be and become the property of TxDOT. Developer at its own cost shall promptly execute, acknowledge and deliver to TxDOT proper bills of sale or other instruments in writing in a form acceptable to TxDOT conveying and assuring to TxDOT title to such material included in any invoice, free and clear of all Liens. Developer, at its own cost, shall conspicuously mark such material as the property of TxDOT, shall not permit such materials to become commingled with non-TxDOT-owned property and shall take such other steps, if any, as TxDOT may require or regard as necessary to vest title to such material in TxDOT free and clear of Liens.

**12.3.3.3** The cost and charges for material included in an invoice but which is subsequently lost, damaged or unsatisfactory may be deducted from succeeding invoices if TxDOT, in its sole discretion, determines that is appropriate after considering the availability of insurance coverage and Developer's actions to replace the lost, damaged or unsatisfactory items.

**12.3.3.4** Payment for material furnished and delivered as indicated in this Section 12.3.3 will not exceed the amount paid by Developer as evidenced by a bill of sale supported by paid invoice. TxDOT shall withhold Retainage from such payment as specified in Section 12.3.1.

#### **12.3.4 Payments for Mobilization, Bond, Letter of Credit and Insurance Premiums and As-Built Documents**

**12.3.4.1** With respect to each Pilot System and Project Segment, Developer shall be entitled to payment for mobilization in installments, in an amount not to exceed 5% of the applicable Pilot System Price or Project Segment Price. The first payment shall be in an amount equal to 25% of the bid item price for mobilization, payable as part of the first Draw Request, which may be submitted at any time following the first month after the NTP for such Pilot System or Project Segment is issued. The second payment shall be in an amount equal to 50% of the bid item price for mobilization, payable when at least 10% of the applicable Price (less mobilization) is earned. The third payment



shall be in the amount of 25% of the bid item price for mobilization, payable when at least 25% of the applicable Price (less mobilization) is earned.

**12.3.4.2** With respect to Pilot System #1, the portion of the Pilot System Price allocable to bond, letter of credit and insurance premiums (for the insurance policies required to be in place following the NTP through Final Acceptance) shall be payable to reimburse Developer for bond, letter of credit and insurance premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Proposal. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following System Acceptance. With respect to Pilot System #1, insurance premiums for the insurance policies required for the first year of the Maintenance Term and the premiums paid for the initial two-year Maintenance Performance Bond and the Maintenance Payment Bond shall be payable to reimburse Developer for the bond premiums actually paid, without markup, profit or overhead, not to exceed the line item for such premiums set forth in the Proposal. Any excess portion of the line item for such premiums set forth in the Proposal shall be payable following expiration of the first two years of the Maintenance Term for Pilot System #1.

**12.3.4.3** Except as set forth in Section 12.3.4.2, payment to reimburse Developer for bond, letter of credit and insurance premiums (including those relating to insurance policies required for Pilot System #1 for the period commencing one year after the start of the Maintenance Term) shall be made for costs actually incurred by Developer, without markup, profit or overhead; provided, however, that TxDOT shall not be responsible for the payment of any increases or adjustments in bond, letter of credit or insurance premiums resulting from adverse changes in Developer's financial condition, Developer risk rating or experience or the acts, omissions, negligence or misconduct of Developer or any member of the Developer-Related Entity.

**12.3.4.4** With respect to each Pilot System and Project Segment, the amount payable for as-built documents acceptable to TxDOT shall equal 1% of the applicable Price for the applicable Pilot System and Project Segment. Developer shall not be entitled to payment for the last 1% of the applicable Price until acceptable as-built documents have been delivered to TxDOT.

### **12.3.5 Equipment**

TxDOT shall not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 12.3.4, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 12.2.6.

## **12.4 Final Payment of a Pilot System Price or a Project Segment Price**

Final Payment of the Price for all Work other than Maintenance Work will be made as follows:

**12.4.1** On or about the date of Final Acceptance of a Pilot System or Project Segment, Developer shall prepare and submit a proposed Final Draw Request to TxDOT showing the proposed total amount due Developer with respect to such Pilot System or Project Segment, as applicable, including any amounts owing from Change Orders. In addition to meeting all other requirements for invoices hereunder, the Final Draw Request shall list all outstanding PCO Notices with respect to such Pilot System or Project Segment, as applicable, stating the amount at issue associated with each such notice. A Final Draw Request shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against Developer or against TxDOT, (b) consent of any Guarantors and Surety to such Final Payment, (c) such other documentation as TxDOT may reasonably require; and (d) the release described in Section 12.4.4, executed by Developer. Prior applications and payments shall be subject to correction in the Final Draw Request. PCO Notices filed concurrently with a Final Draw Request must be otherwise timely and meet all requirements under Sections 13 and 19.

**12.4.2** If a Final Draw Request shows no existing or threatened claims, Liens and stop notices of Subcontractors, Utility Owners, railroads or laborers against Developer or against TxDOT, and provided such Final Draw Request has been approved, TxDOT, in exchange for an executed release meeting the requirements of Section 12.4.4 and otherwise satisfactory in form and content to TxDOT, will pay the entire sum found due on the approved Final Draw Request, less the amount of any Losses that have accrued as of the date of the Final Payment of the Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 12.3.2 above.

**12.4.3** If a Final Draw Request lists any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, or Utility Owners or railroads against Developer or against TxDOT, or if any is thereafter filed, TxDOT may withhold from the payment of the amounts set forth on the approved Final Draw Request such amount as TxDOT deems advisable to cover any amounts owing or which may become owing to TxDOT by Developer, including the amount of any Losses that have accrued as of the date of the Final Payment of the Price and any other deductions permitted under Section 12.3.2 above, the costs to complete or remediate uncompleted Work or Nonconforming Work, and the amount of any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, Utility Owners and railroads against Developer or against TxDOT.

**12.4.4** The executed release from Developer shall be from any and all claims arising from the Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any PCO Notices listed as outstanding in the Final Draw Request. The release shall be accompanied by an affidavit from Developer certifying that:

(a) all Work with respect to such Pilot System or Project Segment, as applicable, has been performed in strict accordance with the requirements of the Contract Documents;

(b) Developer has resolved any claims made by Subcontractors, Utility Owners, laborers, railroads and others against Developer, TxDOT or the Project with respect to such Pilot System or Project Segment, as applicable;

(c) Developer has no reason to believe that any Person has a valid claim against Developer, TxDOT or the Project which has not been communicated in writing by Developer to TxDOT as of the date of the certificate; and

(d) all required guarantees, letters of credit, Warranties, insurance, and the Payment Bond and the Performance Bond are in full force and effect.

Each release and the affidavit shall survive a Final Payment.

**12.4.5** All prior Draw Requests shall be subject to correction in the Final Draw Request.

**12.4.6** TxDOT will review Developer's proposed Final Draw Request, and changes or corrections will be forwarded to Developer for correction within 20 business days. TxDOT shall pay any undisputed amounts with respect to such Pilot System or Project Segment, as applicable, less any Losses that have accrued as of the date of the Final Payment of the Price, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 12.3.2 above, within 30 Days after its approval of such amounts on the application for Final Payment of the Price, but not earlier than the date of Final Acceptance with respect to such Pilot System or Project Segment, as applicable.

## **12.5 Final Payment of a Pilot System Maintenance Price or a Project Segment Maintenance Price**

Final Maintenance Payment for a Pilot System or Project Segment will be made as follows:

**12.5.1** On or about the date that the Maintenance Term terminates, Developer shall prepare and submit a proposed Final Maintenance Price Draw Request to TxDOT for the Final Maintenance Payment, showing the proposed total amount due Developer with respect to the Project Segment, including any amounts owing from Change Orders and the portion of the Maintenance Price identified in Exhibit U-3 (for the Pilot Systems) or in any Project Segment Supplement as the price for "End of Term Maintenance Activities". In addition to meeting all other requirements for Maintenance Price Draw Requests hereunder, the Final Maintenance Payment Draw Request shall list all outstanding PCO Notices with respect to such Project Segment, stating the amount at issue associated with each such notice. A Final Maintenance Payment Draw Request shall be accompanied by (a) evidence regarding the status of all existing or threatened claims, Liens and stop notices of Subcontractors and laborers against Developer or against TxDOT, (b) consent

of any Guarantors and Surety to such Final Payment, (c) a list of any System equipment that has unexpired warranty records, accompanied by the service records with respect to such equipment; (d) such other documentation as TxDOT may reasonably require; and (e) the release described in Section 12.4.4, executed by Developer. Prior applications and payments shall be subject to correction in the Final Maintenance Payment Draw Request. PCO Notices filed concurrently with a Final Maintenance Payment Draw Request must be otherwise timely and meet all requirements under Sections 13 and 19.

**12.5.2** The provisions of Sections 12.4.2 and 12.4.3, above, shall apply with respect to the Final Maintenance Payment.

**12.5.3** The Final Maintenance Payment shall also be subject to Developer's certification in the release required by Section 12.4.4 that Developer has satisfied all the conditions to the end of the Maintenance Term set forth in Section 4.5.11 of the TP.

~~TxDOT will review Developer's proposed Final Maintenance Price Draw Request, and~~ changes or corrections will be forwarded to Developer for correction within 20 business days. TxDOT shall pay any undisputed amounts with respect to such Project Segment, as applicable, less any Losses that have accrued as of the date of the Final Maintenance Payment, the costs to complete or remediate uncompleted Work or Nonconforming Work and any other deductions permitted under Section 12.3.2 above, within 30 Days after its approval of such amounts on the application for the Final Maintenance Payment, but not earlier than the end of the Maintenance Term.

## **12.6 Payment to Subcontractors**

**12.6.1** No later than 10 Days after receipt of payment from TxDOT, Developer shall promptly pay each Subcontractor, out of the amount paid to Developer on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract and any other offsets and deductions provided in the Subcontract or by law. No later than 10 Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Developer shall return all moneys withheld in retention from the Subcontractor. Such payment shall be made promptly following satisfaction of the foregoing requirements, even if Work to be performed by Developer or other Subcontractors is not completed and has not been accepted. Each Subcontract shall require the Subcontractor to make payments to sub-subcontractors and Suppliers in a similar manner.

**12.6.2** For the purpose of this Section 12.6, satisfactory completion shall have been accomplished when:

(a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(b) the Work performed by the Subcontractor has been inspected and approved in accordance with the Contract Documents and the final quantities of the Subcontractor's work have been determined and agreed upon.

**12.6.3** The inspection and approval of a Subcontractor's work does not eliminate or impair the Developer's responsibility for the Work. Any delay or postponement of payments to Subcontractors from the above-referenced time frames may occur only for good cause following written approval by TxDOT. Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. TxDOT shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. Interest on late payments to Subcontractors shall be Developer's responsibility, and shall not be a part of the applicable Price.

## **12.7 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 Contract Documents, including Developer's obligation to achieve Final Acceptance of each Pilot System and Project Segment and all Work in accordance with the Contract Documents, and Developer shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any dispute regarding such payment shall be resolved pursuant to Section 19. Developer shall proceed as directed by TxDOT pending resolution of the dispute. Upon resolution of any such dispute, each party shall promptly pay to other any amount owing.

## **SECTION 13. CHANGES IN THE WORK**

This Section 13 sets forth the requirements for obtaining all Change Orders under this Agreement. Developer hereby acknowledges and agrees that each Price constitutes full compensation for performance of all of the Work for the applicable Pilot System and/or Project Segment, subject only to those exceptions specified in this Section 13, and that TxDOT is subject to constraints limiting its ability to increase any Price or extend any Completion Deadlines. Developer unconditionally and irrevocably waives the right to any claim for a time extension or for any monetary compensation in addition to the applicable Price and other compensation specified in this Agreement, except in accordance with this Section 13. To the extent that any other provision of this Agreement expressly provides for a Change Order to be issued, such provision is incorporated into and subject to this Section 13.

### **13.1 Circumstances Under Which Change Orders May Be Issued**

#### **13.1.1 Definition of and Requirements Relating to Change Orders**

##### **13.1.1.1 Definition of Change Order**

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. TxDOT may issue unilateral Change Orders as specified in Section 13.2.2. Change Orders may be requested by Developer only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by TxDOT. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Work;
- (b) to revise a Completion Deadline;
- (c) to revise a Price;
- (d) to revise other terms and conditions of the Contract

Documents.

Upon TxDOT's approval of the matters set forth in the Change Order form (whether it is initiated by TxDOT or requested by Developer), TxDOT shall sign such Change Order form indicating approval thereof. A Change Order may, at the sole discretion of TxDOT, direct Developer to proceed with the Work with the amount of any adjustment of any Completion Deadline or Price to be determined in the future. All additions, deductions or changes to the Work as directed by Change Orders shall be executed under the conditions of the original Contract Documents.

### **13.1.1.2 Issuance of Directive Letter**

TxDOT may at any time issue a Directive Letter to Developer in the event of any desired change in the Work or in the event of any dispute regarding the scope of the Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Developer shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Developer's original scope of Work, Developer shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that TxDOT issue a Change Order with respect thereto).

### **13.1.1.3 Directive Letter as Condition Precedent to Claim that TxDOT-Directed Change Has Occurred**

**13.1.1.3.1** Developer shall not be entitled to additional compensation or time extension for any such work performed prior to receipt of a Directive Letter or Change Order, except to the extent that Section 13.3.2.2 preserves Developer's right to compensation for work performed following delivery of a Request for Partnering. Developer acknowledges that it will be at risk if it elects to proceed with any such work, since TxDOT may later decide not to provide direction with regard to such work. In addition to provision of a PCO Notice and subsequent Change Order request pursuant to Section 13.3.2, receipt of a Directive Letter from TxDOT shall be a condition precedent to Developer's right to make a Claim that a TxDOT-Directed Change has occurred.

**13.1.1.3.2** The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT-Directed Change occurred. The determination whether a TxDOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter in fact constituted a change in those requirements. The requirements of Section 13.1.1.3.1 shall not imply that a Directive Letter would be required in order for Developer to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

### **13.1.2 Right of TxDOT to Issue Change Orders**

TxDOT may, at any time and from time to time, without notice to any Surety, authorize and/or require changes in the Work within the general scope of this Agreement pursuant to a Change Order. For the purpose of this Section 13.1.2, any direction to perform work shall be considered within the general scope of this Agreement if it is related to the Project; any direction to delete or modify Work shall be considered within the general scope unless as a result this Agreement would no longer be considered a design-build contract for the Project of the nature described in the RFDP. Developer shall have no obligation to perform any work outside the general scope of this Agreement, except on terms mutually acceptable to TxDOT and Developer.

## **13.2 TxDOT-Initiated Change Orders**

This Section 13.2 concerns (a) Change Orders issued by TxDOT following a Request for Change Proposal and (b) Change Orders unilaterally issued by TxDOT.

### **13.2.1 Request for Change Proposal**

**13.2.1.1** If TxDOT desires to issue a TxDOT-Directed Change or to evaluate whether to initiate such a change, then TxDOT may, at its discretion, issue a Request for Change Proposal. A Directive Letter may also constitute a Request for Change Proposal.

**13.2.1.2** Within five business days after Developer's receipt of a Request for Change Proposal, or such longer period as may be mutually agreed to by TxDOT and Developer, TxDOT and Developer shall consult to define the proposed scope of the change. Within five business days after the initial consultation, or such longer period as may be mutually agreed to by TxDOT and Developer, TxDOT and Developer shall consult concerning the estimated cost and time impacts.

**13.2.1.3** Within five business days after the second consultation and provision of any data described in Section 13.2.1.2, TxDOT shall notify Developer whether TxDOT (a) wishes to issue a Change Order, (b) wishes to request Developer to provide a Cost and Schedule Proposal as discussed at the meeting, (c) wishes to request Developer to prepare a modified work plan for the change and a Cost and Schedule Proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. TxDOT may at any time, in its sole discretion, require Developer to provide two alternative Cost and Schedule Proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

**13.2.1.4** If so requested, Developer shall, within ten business days after receipt of the notification described in Section 13.2.1.3, or such longer period as may be mutually agreed to by TxDOT and Developer, prepare and submit to TxDOT for review and approval by TxDOT a Cost and Schedule Proposal (in the format provided by TxDOT) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by TxDOT. Developer shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by TxDOT, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by TxDOT, may be included in the Change Order as reimbursable items. If the Change Order is approved, such design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

**13.2.1.5** If Developer and TxDOT agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change



justifies additional compensation or time or disagree as to the amount of any change to be made to the applicable Price or Completion Deadline, TxDOT may, in its sole discretion, order Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at TxDOT's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.1.2.

**13.2.1.6** If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Developer to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, Developer shall provide an incomplete proposal which includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a critical path as is requested by TxDOT, and (c) if all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable. Developer shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 13.3.2.6.2.

### **13.2.2 Unilateral Change Orders**

TxDOT may issue a Change Order at any time, regardless of whether it has issued a Request for Change Proposal. Developer shall be entitled to compensation in accordance with Section 13.7 for additional Work which is required to be performed as the result of any unilateral Change Order, and shall have the right to submit the issue of entitlement to an extension of the Completion Deadlines to dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a price deduction deemed appropriate by TxDOT, and Developer shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Section 19.

### **13.2.3 TxDOT-Directed Changes Under \$5,000**

Developer shall not be entitled to an increase in a Price for any TxDOT-Directed Changes involving less than \$5,000 in additional direct costs incurred by Developer; provided, however, that the aggregate direct costs incurred by Developer as a result of any such TxDOT-Directed Changes does not exceed an aggregate for all Pilot Systems and Project Segments of \$25,000 per year of this Agreement, commencing upon issuance of Pilot System NTP 1.

### **13.3 Developer-Requested Change Orders**

#### **13.3.1 Eligible Changes**

**13.3.1.1** Developer may request a Change Order to extend a Completion Deadline only for delays directly attributable to one or more of the following events or circumstances which change the duration of a Critical Path:

- (a) Force Majeure Events;
- (b) TxDOT-Caused Delays;
- (c) delays relating to Differing Site Conditions, discovery of Hazardous Materials, and/or Changes in Law, to the extent permitted by Section 13.9;
- (d) delays relating to Necessary Basic Configuration Changes, to the extent permitted by Section 13.8.

**13.3.1.2** Developer may request a Change Order to increase the applicable Price only for increased costs of performance of the Work as follows:

- (a) subject to Section 13.2.3, additional costs directly attributable to additional Work resulting from TxDOT-Directed Changes and TxDOT-Caused Delays for which TxDOT has not submitted a Change Order or a Request for Change Proposal;
- (b) additional costs directly attributable to Necessary Basic Configuration Changes, to the extent provided in Section 13.8;
- (c) additional costs relating to Differing Site Conditions, Hazardous Materials, and Force Majeure Events, to the extent provided in Section 13.9; or
- (d) additional costs directly attributable to uncovering, removing and restoring Work, to the extent provided in Section 5.4.3.

**13.3.1.3** Developer's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and furthermore is subject to Developer's compliance with all notification and other requirements identified herein. Developer shall initiate the Change Order process by delivery of a PCO Notice as described in Section 13.3.2, followed by submittal of a Request for Change Order and supporting documentation to TxDOT.

#### **13.3.2 Procedures**

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Developer's entitlement to request and receive a Change Order except those involving a Request for Change Proposal. Developer understands that it shall be forever barred from recovering against TxDOT under this Section 13 if it fails to give notice of any act, or failure

to act, by TxDOT or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section 13.3.

### **13.3.2.1 Delivery of Requests for Partnering and PCO Notices**

Developer acknowledges the importance of providing prompt notification to TxDOT upon occurrence of any event or thing entitling Developer to a Change Order under Section 13.3.1. Among other things, such notification serves the purpose of allowing TxDOT to take action to mitigate adverse impacts. Such notification must be delivered as promptly as possible after the occurrence of such event or situation, through either (a) a PCO Notice as described in Section 13.3.2.3 or (b) if permitted by Section 13.3.2.2, a Request for Partnering followed by a PCO Notice if appropriate.

### **13.3.2.2 Requests for Partnering**

The term "Request for Partnering" shall mean a notice delivered by Developer requesting that TxDOT enter into partnering discussions with Developer with regard to an event or situation that has occurred within the scope of Section 13.3.1.2. The Request for Partnering shall reference this Section 13.3.2.2 and shall describe the event or situation as well as action which Developer would like to take with respect thereto. The parties shall promptly meet and confer for the purpose of determining what action should be taken and also to determine whether the parties are in agreement as to entitlement to a Change Order. Either party may at any time terminate partnering discussions by delivery of written notice to the other, and partnering discussions shall automatically terminate 60 days after delivery of the Request for Partnering unless both parties agree in writing to an extension. Within five Business Days after termination of partnering discussions, if TxDOT has not issued either a Directive Letter or Change Order, Developer must submit a PCO Notice in order to preserve its right to pursue a Change Order. The foregoing process is not available for events or situations involving a delay to the Critical Path. With regard to any such events or situations, Developer must submit a PCO Notice as provided in Section 13.3.2.3.

### **13.3.2.3 PCO Notices**

The term "PCO Notice" shall mean a notice delivered by Developer, meeting the requirements set forth below, stating that an event or situation has occurred within the scope of Section 13.3.1 and stating which subsection thereof is applicable. The first notice shall be labeled "PCO Notice No. 1" and subsequent notices shall be numbered sequentially.

**13.3.2.3.1** The PCO Notice shall: (a) state in detail the facts underlying the anticipated Request for Change Order, the reasons why Developer believes additional compensation or time will or may be due and the date of occurrence, (b) state the name, title, and activity of each Project Management Consultant and TxDOT representative knowledgeable of the facts underlying the anticipated Request for Change Order, (c) identify any documents and the substance of any oral

communication involved in the facts underlying the anticipated Request for Change Order, (d) state in detail the basis for necessary accelerated schedule performance, if applicable, (e) state in detail the basis that the work is not required by this Agreement, if applicable, (f) identify particular elements of Agreement performance for which additional compensation may be sought under this Section 13.3.2, (g) identify any potential critical path impacts, and (h) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

**13.3.2.3.2**If the Request for Change Order relates to a decision which this Agreement leaves to the discretion of a Person or as to which this Agreement provides that such Person's decision is final, the PCO Notice shall set out in detail all facts supporting Developer's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

**13.3.2.3.3**Written notification provided in accordance with Section 13.9.1.2 or 13.9.3.1.1 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

**13.3.2.3.4**Any adjustments made to this Agreement shall not include increased costs or time extensions for delay resulting from Developer's failure to timely provide requested additional information under this Section 13.3.2.3.

#### **13.3.2.4 Waiver**

**13.3.2.4.1**Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten days after Developer first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Developer shall be deemed to have waived (a) the right to collect any costs incurred prior to the date of delivery of the Request for Partnering (if applicable) or PCO Notice (if no Request for Partnering was submitted or if the PCO Notice was not timely submitted following termination of partnering discussions), and (b) the right to seek an extension of any Completion Deadline with respect to any delay in a critical path which accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 13.9.3.1, Developer shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that TxDOT is not afforded the opportunity to inspect such material or condition before it is disturbed.

**13.3.2.4.2**In addition to the limitations set forth in Section 13.3.2.4.1, Developer's failure to provide a PCO Notice within 60 days after Developer first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Developer from any relief, unless Developer can show, based on a preponderance of the evidence, that (a) TxDOT was not materially prejudiced by the lack of notice, or (b) TxDOT's designated

representative specified in accordance with Section 24.5.1 had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that Developer believed it was entitled to a Change Order with respect thereto. For situations involving Requests for Partnering, the 60-Day period shall be extended until two Business Days following termination of the partnering period. In other words, if the requirements of clause (a) or clause (b) above are satisfied, Developer shall retain the right to receive a Change Order, but shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice or Request for Partnering, as applicable, and shall be deemed to have waived the right to seek a time extension with respect to any delay in any Critical Path which accrued prior to the date of delivery of the PCO Notice.

### **13.3.2.5 Delivery of Request for Change Order**

Developer shall deliver all Requests for Change Order under this Section 13.3 to TxDOT within 30 days after delivery of the PCO Notice, or such longer period of time as may be allowed in writing by TxDOT. TxDOT may require design and construction costs to be covered by separate Requests for Change Order. If Developer requests a time extension, then TxDOT, in its sole discretion, may require Developer to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Developer believes that the costs associated with such a recovery are prohibitive, then Developer shall recommend a date to be shown in the alternative Change Order form. If Developer fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all of the requirements of Section 13.3.2.6 within the appropriate time period, Developer shall be required to provide a new PCO Notice before it may submit a Request for Change Order.

### **13.3.2.6 Incomplete Requests for Change Order**

**13.3.2.6.1** Each Request for Change Order provided under Section 13.3.2.5 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Developer shall provide an incomplete Request for Change Order which fills in all information capable of being ascertained. Said incomplete Request shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to TxDOT stating why such requirements cannot be met, (b) provide such information regarding projected impact on a critical path as is requested by TxDOT, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

**13.3.2.6.2** Developer shall furnish, when requested by TxDOT or its designee, such further information and details as may be required to determine the facts or contentions involved. Developer agrees that it shall give TxDOT or its designee access to any and all of Developer's books, records and other

materials relating to the Work, and shall cause its Subcontractors to do the same, so that TxDOT or its designee can investigate the basis for such proposed Change Order. Developer shall provide TxDOT with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to TxDOT, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. TxDOT may reject the Request for Change Order at any point in the process. TxDOT's failure to respond to a complete Request for Change Order within 15 business days of delivery of the request shall not be deemed an acceptance of such request, and the Developer shall have the burden of following up with TxDOT on the status of any such Request for Change Order.

#### **13.3.2.7 Importance of Timely Response**

Developer acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of notification of such events and situations and Requests for Change Orders and updates thereto are of vital importance to TxDOT. TxDOT is relying on Developer to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Project Schedule or Price and, if so, whether Developer believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect a Price or Completion Deadline, TxDOT will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within TxDOT's funding and time restraints. The following matters (among others) shall be considered in determining whether TxDOT has been prejudiced by Developer's failure to provide timely notice: (a) the effect of the delay on alternatives available to TxDOT (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence); and (b) the impact of the delay on TxDOT's ability to obtain and review objective information contemporaneously with the event.

#### **13.3.2.8 Review of Subcontractor Claims**

Prior to submission by Developer of any Request for Change Order which is based in whole or in part on a request by a Subcontractor to Developer for a price increase or time extension under its Subcontract, Developer shall have reviewed all claims by the Subcontractor which constitute the basis for the Request for Change Order and determined in good faith that each such claim is justified hereunder and that Developer is justified in requesting an increase in the applicable Price and change in the applicable Completion Deadlines in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of Developer's analysis of all Subcontractor claims components and shall include a certification signed by Developer's Project Manager stating that Developer has investigated the basis for the Subcontractor's claims and has determined that all such

claims are justified as to entitlement and amount of money and/or time requested, has reviewed and verified the adequacy of all back-up documentation to be placed in escrow pursuant to Section 21.2, and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Request for Change Order involving Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

### **13.3.3 Performance of Disputed Work**

If TxDOT refuses to issue a Change Order based on Developer's request, Developer shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 19. Developer shall maintain and deliver to TxDOT, upon request, contemporaneous records, meeting the requirements of Section 13.10, for all work performed which Developer believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

## **13.4 Contents of Change Orders**

### **13.4.1 Form of Change Order**

Each Cost and Schedule Proposal and Request for Change Order shall be prepared in form acceptable to TxDOT, and shall meet all applicable requirements of this Section 13.

### **13.4.2 Scope of Work, Cost Estimate, Delay Analysis and Other Supporting Documentation**

Developer shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Cost and Schedule Proposal and Request for Change Order.

#### **13.4.2.1 Scope of Work**

The scope of work shall describe in detail satisfactory to TxDOT all activities associated with the Change Order, including a description of additions, deletions and modifications to the existing requirements of the Contract Documents.

#### **13.4.2.2 Cost Estimate**

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment and markups for overhead and profit, unless TxDOT agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Developer shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and



shall include such quotes as back-up for Developer's estimate. No markup shall be allowed in excess of the amounts allowed under Sections 13.5.2 and 13.7. Developer shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

#### **13.4.2.3 Delay Analysis**

If Developer claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to TxDOT, which compares the proposed new schedule to the current approved Project Schedule.

#### **13.4.2.4 Other Supporting Documentation**

Developer shall provide such other supporting documentation as may be required by TxDOT.

#### **13.4.3 Justification**

All Requests for Change Orders shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 13 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 13.10) which establish the necessity and amount of such proposed change.

#### **13.4.4 Developer Representation**

Each Change Order shall be accompanied by a certification under penalty of perjury, in form acceptable to TxDOT, executed by Developer and stating that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate and current. Each Change Order involving Work by a Subcontractor for which pricing data is required to be provided under Section 21.2 shall include a statement that the Subcontractor pricing data has been provided and shall include a copy of the certification required to be provided by the Subcontractor under Section 21.2.

### **13.5 Certain Limitations**

#### **13.5.1 Limitation on Price Increases**

Any increase in a Price allowed hereunder shall exclude: (a) costs caused by the breach of contract or fault or negligence, or act or failure to act by any Developer-Related



Entity; (b) costs to the extent that they are unnecessary or could reasonably be avoided by Developer, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work; and (c) costs for remediation of any Nonconforming Work. Costs incurred for the purpose of mitigating damages as described in (b) above, and not otherwise disallowed hereunder, would be reimbursable.

### **13.5.2 Limitation on Delay and Disruption Damages**

#### **13.5.2.1 Acceleration Costs; Delay and Disruption Damages**

Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by TxDOT as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.5. Other delay and disruption damages shall be compensable hereunder only in the case of delays which qualify as TxDOT-Caused Delays entitling Developer to an extension of a Completion Deadline. Without limiting the generality of the foregoing, costs of rearranging Developer's work plan to accommodate TxDOT-Directed Changes not associated with an extension of a Completion Deadline shall not be compensable hereunder.

#### **13.5.2.2 Other Limitations**

Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7 and any additional field office and jobsite overhead costs incurred by Agreement or directly attributable to such delays. In addition, before Developer may obtain any increase in a Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, Developer shall have demonstrated to TxDOT's satisfaction that:

(a) its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work; and

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity (i.e. consumed all available Float and extended the time required to achieve System Acceptance, Punch List Acceptance or Final Acceptance beyond the applicable Completion Deadline); and

(c) the delay or damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Developer-Related Entity, and could not reasonably have been avoided by Developer, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (provided that TxDOT has agreed to reimburse Developer for additional costs reasonably incurred in connection with such reallocation or redeployment); and

(d) the delay for which compensation is sought is not concurrent with any delay for which Developer is responsible hereunder; and

(e) Developer has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to TxDOT.

### **13.5.3 Limitation on Time Extensions**

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path, (b) was due to the fault or negligence, or act or failure to act of any Developer-Related Entity, (c) is concurrent with any other unrelated delay to a Critical Path that is Developer's responsibility hereunder, or (d) could reasonably have been avoided by Developer, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a TxDOT-Caused Delay, Developer shall be entitled to a time extension unless TxDOT shall have agreed, if requested to do so, to reimburse Developer for its costs incurred, if any, in resequencing, reallocating or redeploying its forces). Developer shall be required to demonstrate to TxDOT's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity (i.e. consumed all available Float and extended the time required to achieve System Acceptance, Punch List Acceptance or Final Acceptance beyond the applicable Completion Deadline).

### **13.5.4 Work Performed Without Direction**

To the extent that Developer undertakes any efforts outside of the scope of the Work, unless Developer has received a Directive Letter or Change Order signed by TxDOT to undertake such efforts, Developer shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, TxDOT may require Developer to remove or otherwise undo any such work, at Developer's sole cost.

## **13.6 Change Order Pricing**

The price of a Change Order under this Section 13.6 shall be a negotiated lump sum price or unit prices as provided below. Lump sum price or unit prices shall be based on the original allocations of the applicable Price to comparable activities as set forth in Exhibit U, whenever possible. If reference to price allocations is inappropriate and if requested by TxDOT, negotiation for lump sum or unit price Change Orders shall be on an Open Book Basis and may be based on the pricing contained in the EPDs as well as Subcontractors' bid prices.

### **13.6.1 Detailed Cost Proposal**

Developer may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 13.7: (a) showing all impacts on this Agreement from Work additions, deletions and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made. When the Change Order adds Work to Developer's scope, the increase in the applicable Price shall be negotiated based on estimates or actual costs of labor, material and equipment. When the Change Order deletes Work from Developer's scope, the amount of the reduction in the applicable Price shall be based upon an estimate including a bill of material, a breakdown of labor and equipment costs. Markup for profit and overhead consistent with Section 13.7 shall apply for added and deleted Work Change Orders.

### **13.6.2 Identification of Conditions**

Developer shall identify all conditions with respect to prices or other aspects of the proposal, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

### **13.6.3 Contents**

A negotiated Change Order shall specify costs, scheduling requirements, time extensions and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the parties may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated construction and installation cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction and installation cost.

### **13.6.4 Added Work**

When the Change Order adds Work to Developer's scope, the increase in the applicable Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 13.5.2 and 13.7.6. Risk associated with the Work described in the Change Order shall be addressed through the assumptions contained therein regarding the scope of such Work.

### **13.6.5 Deleted Work**

When the Change Order deletes Work from Developer's scope, the amount of the reduction in the applicable Price shall be based upon Developer's estimated price for such work included in the Proposal for a Pilot System, or in the relevant Project Segment Supplement for a Project Segment, including a bill of material and a breakdown of labor and equipment costs, plus variable overhead and profit associated with the deleted work.

Estimated costs that the Developer applied to develop the original Pilot System Prices and Hypothetical Project Segment Scenario Prices, as well as markup for profit and variable overhead at the rates the Developer applied to develop the original Pilot System Prices and Hypothetical Project Segment Scenario Prices, as reflected in the EPDs, shall apply for determining the amount of the price reduction for deleted Work Change Orders. The amount of risk associated with such Work as of the Contract Date by Developer shall be an additional factor in determining the amount of the price reduction for deleted Work Change Orders. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction. Reimbursement will be made for actual work done and all costs incurred, including mobilization of materials, prior to the date of the Directive Letter or other notification by TxDOT eliminating the work.

#### **13.6.6 Change Order Both Adding and Deleting Work**

When the Change Order includes both added and deleted Work, Developer shall prepare a statement of the cost of labor, material and equipment for both added and deleted work. If the cost of labor, material and equipment for the work added and deleted results in a:

(a) Net increase in cost, the change shall be treated as work added and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the applicable Price.

(b) Net decrease in cost, the change shall be treated as work deleted and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the price deduct to the applicable Price.

(c) Net change of zero, there will be no change in the applicable Price.

#### **13.6.7 Unit Priced Change Orders**

Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the applicable Price based on estimated quantities. Upon final determination of the quantities, TxDOT will issue a modified Change Order setting forth the final adjustment to the applicable Price.

#### **13.6.8 All-Inclusive Change Orders**

All Change Orders submitted by Developer shall be all-inclusive, comprehensive and complete and shall not include any conditions with respect to pricing or schedule.

### **13.7 Time and Materials Change Orders**

TxDOT may at its discretion issue a Time and Materials Change Order whenever TxDOT determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Developer to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the applicable Price will be determined and the estimated total change in the Price anticipated thereunder. Upon final determination of the allowable costs, TxDOT shall issue a modified Change Order setting forth the final adjustment to the applicable Price.

#### **13.7.1 Labor Costs**

The cost of labor for workers used in the actual and direct performance of the Change Order work, whether provided by Developer or a Subcontractor, will equal the sum of the following:

(a) For construction-related labor, (1) the actual cost for direct labor; plus (2) the actual cost of workers' compensation and liability insurance required under this Agreement, health, welfare and pension benefits and Social Security deductions or 55% of the actual direct labor cost, whichever is less; plus (3) 25% of the total of the amounts set forth in clauses (1) and (2) for profit and overhead.

(b) For non-construction-related Work (engineering professional services and toll systems services), (1) the actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (2) a labor surcharge in the amount of 200%, which shall constitute full compensation for all profit, overhead and all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages.

#### **13.7.2 Material Costs**

Material costs for Change Order work shall be the actual cost of all materials to be used in the performance of construction work including normal wastage allowance as per industry standards, less salvage value, plus 25% for profit and overhead. The material prices shall be supported by valid quotes and invoices from the suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts.

#### **13.7.3 Equipment**

**13.7.3.1** Costs for Developer-owned machinery, trucks, power tools or other similar equipment that are required for Change Order work will be allowed based on the following methodology:

(a) The direct cost of fuel, lubricants, repairs, parts, and depreciation will be considered without any additional compensation percentage for overhead and profit being added; and

(b) The equipment rental rates shall be those tabulated in the most recent version of the *Rental Rate Blue Book*, available at [www.equipmentwatch.com](http://www.equipmentwatch.com)). The rental rates to be used shall be the published monthly rate divided by 150 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying it by the *Rental Rate Blue Book* adjustment rate for the year the equipment was manufactured and by the regional factor contained in the *Rental Rate Blue Book* estimated hourly operating cost rate.

Developer shall be considered to own such items if an ownership interest therein is held by (w) Developer, (x) any equity participant in Developer, (y) any Subcontractor performing construction work, or (z) any Affiliate of Developer, any equity participant in Developer or any such Subcontractor. If the publication of the *Rental Rate Blue Book* should be discontinued for any reason, TxDOT may select a different publication from which to make the described calculations.

**13.7.3.2** Costs for machinery, trucks, power tools or other similar equipment that are required for Change Order work rented from any commercial enterprises routinely offering equipment and tools for rent or lease to the public will be allowed in an amount equal to the direct rental rate for the equipment plus a 5% markup for overhead and profit.

**13.7.3.3** The time to be paid for use of equipment on the Project Site shall be the time the equipment is in operation on the Change Order work being performed. The time shall include the reasonable time required to move the equipment to the location of the Change Order work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the equipment is also used at the Project Site other than for Change Order work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment for loading and transporting will be made if the equipment is also used at the Project Site other than for Change Order work. Time will be computed in half and full hours. In computing the time for use of equipment, less than 30 minutes shall be considered one-half hour.

#### **13.7.4 Subcontracted Work**

To the extent that any Change Order is intended to compensate Developer for the cost of work performed by Subcontractors, the Change Order shall provide for compensation equal to (1) the actual cost to Developer of such work (which shall be charged by the Subcontractor on a time and materials basis in accordance with this Section 13.7, unless otherwise approved in writing by TxDOT), plus (2) 5% of such cost. The 5% markup for subcontracted work shall not apply to (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

### **13.7.5 Other Direct Costs**

For any justified change-related direct cost not covered by the categories of costs contained in Sections 13.7.1 through 13.7.5, Developer shall accept as full payment therefor an amount equal to the actual cost to Developer for such direct cost item. Without additional mark-up, back-up documentation supporting each cost item for this category shall be provided by Developer and approved by TxDOT in writing prior to any payment authorization being granted.

### **13.7.6 Overhead Items**

The mark-ups specified herein constitute full and complete compensation for all overhead, tools or equipment having an individual replacement value of \$1,000 or less, consumables (items which are consumed in the performance of the Work which are not a part of the finished product) and other indirect costs of the added or changed Work as well as for profit thereon, including any and all costs and expenses incurred due to any delay in connection with the added or changed Work. Developer's mark-up percentages shall be considered to include:

- (a) Supervisory expenses of all types, including salary and expenses of executive officers, supervising officers or supervising employees, excluding only direct supervision of force account work;
- (b) Clerical or stenographic employees;
- (c) Any and all field, jobsite and general home office overhead and operating expenses whatsoever;
- (d) Subsistence and travel expenses for all personnel, other incidental job burdens, and bonuses not otherwise covered;
- (e) Quality assurance and quality control; and
- (f) Bond and insurance premiums.

With respect to non-construction related labor costs, overhead is covered by the labor surcharge, and includes accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

### **13.7.7 Change Order Data**

Developer shall contemporaneously collect, record in writing, segregate and preserve (a) all data necessary to determine the costs described in this Section 13.7 with respect to all Work which is the subject of a Change Order or a requested Change Order (excluding negotiated Change Orders previously executed and delivered), specifically including costs associated with design work as well as Developer's costs for Utility Adjustment Work, and (b) all data necessary to show the actual impact (if any) on the



Critical Path, the Project Schedule, and performance deadlines with respect to all Work which is the subject of a Change Order or a proposed Change Order. Such data shall be provided to TxDOT and any authorized representative of TxDOT reviewing any Claim or Dispute regarding compensation for such Work. Developer hereby waives the right to obtain compensation for any work for which cost data is required to be provided hereunder, if Developer fails to maintain and timely provide to TxDOT cost data meeting the requirements of this Agreement.

**13.7.7.1** Developer shall maintain its records in such a manner as to provide a clear distinction between (a) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the applicable Price and (b) the costs of other operations. Developer shall furnish daily, on forms approved by TxDOT, reports of all costs described in (a) above. The reports shall itemize all costs for labor, materials, and equipment rental and give total of costs through the date of the report. For workers, the reports shall include hours worked, rates of pay, names and classifications. For equipment, the reports shall include size, type, identification number, rental rate and actual working hours of operation. All such records and reports shall be made immediately available to TxDOT upon its request. The cost of furnishing such reports are deemed to be included in Developer's overhead and fee percentages.

**13.7.7.2** All reports shall be signed by Developer. TxDOT will compare its records with Developer's reports, make the necessary adjustments and compile the costs of Work completed under a Time and Materials Change Order. When such reports are agreed upon and signed by both Parties, they will become the basis of payment.

## **13.8 Necessary Basic Configuration Changes**

**13.8.1** Notwithstanding the fact that this Agreement generally obligates Developer to undertake all work necessary to complete each Pilot System and Project Segment without an increase in the applicable Price, this Section 13.8 provides for an increase in the Price to be made in conjunction with Necessary Basic Configuration Changes, and such changes shall be considered a TxDOT-Directed Change for which TxDOT has not submitted a Change Order or a Request for Change Proposal. If Developer commenced any construction work affected by the change prior to delivery of an appropriate PCO Notice, the Change Order shall allow TxDOT a credit for the cost of any unnecessary work performed and/or shall exclude any additional costs associated with redoing the work already performed.

**13.8.2** Developer shall be responsible for any cost increases and/or delays which affect the duration of a Critical Path resulting from changes in requirements and obligations of Developer relating to any Pilot System and/or Project Segment due to Errors in the Owner Design Documents other than those which require a Necessary Basic Configuration Change. In such event, no change in the Work shall be deemed to have occurred and no Change Order shall be issued for any such cost increases and/or delays.



## **13.9 Change Orders for Differing Site Conditions, Force Majeure Events, and Hazardous Materials**

### **13.9.1 Differing Site Conditions**

**13.9.1.1** Subject to the restrictions and limitations set forth in this Section 13, Developer shall be entitled to a Change Order for certain additional costs which are directly attributable to any Differing Site Conditions to the extent permitted in this Section 13.9.1. No time extension shall be available with respect to Differing Site Conditions, and no delay damages shall be recovered. To the extent that additional costs are incurred in connection with a Pilot System or a Project Segment due to changes in Developer's obligations relating to the Work resulting from the existence of Differing Site Conditions and which are not reimbursed by insurance proceeds, TxDOT shall be fully responsible for any additional costs directly attributable to changes in Developer's obligations hereunder resulting from the existence of Differing Site Conditions, and a Change Order shall be issued to compensate Developer for such additional costs.

**13.9.1.2** During progress of the Work, if Differing Site Conditions are encountered, Developer shall immediately notify TxDOT thereof telephonically or in person, to be followed immediately by written notification. Developer shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by TxDOT. In the event that any Governmental Approvals specify a procedure to be followed, Developer shall follow the procedure set forth in the Governmental Approvals. If the discovery of Differing Site Conditions necessitates a change in the design of the Project, such change shall be submitted to TxDOT for concurrence in accordance with TP Section 2.4.5.

**13.9.1.3** Developer hereby acknowledges and agrees that it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions. Developer shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost.

**13.9.1.4** Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by Developer with respect to the condition of the applicable Project Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Developer to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. No time extension or costs will be allowed in connection with any work stoppage in affected areas during the investigation period described above.

### **13.9.2 Force Majeure Events**

Subject to the limitations contained in, and upon Developer's fulfillment of all applicable requirements of, this Section 13, TxDOT shall issue Change Orders (a) to

compensate Developer for additional costs incurred arising directly from Force Majeure Events (excluding Acceleration Costs or delay and disruption damages other than for any Force Majeure Events which are included in the definition of TxDOT-Caused Delay), and (b) to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event, to the extent that it is not possible to work around the problem.

### **13.9.3 Hazardous Materials Management**

If compensation is payable to Developer pursuant to Section 6.3 with respect to Hazardous Materials Management, the amount of the Change Order shall either be a negotiated amount acceptable to the Parties, or 100% of the Reimbursable Hazardous Materials Costs for the work in question, subject to the limitations set forth in this Section 13.9.4. Developer shall not be entitled to a Change Order for additional compensation or extension of time with respect to the Hazardous Materials Management responsibilities set forth in Sections 6.3.4 and 6.3.5.

Entitlement to compensation or a time extension shall be limited to work performed pursuant to Developer's Hazardous Materials Management Plan, Investigative Work Plan and Site Investigation Report for such Hazardous Materials as approved by TxDOT, in writing. No compensation or time extension shall be allowed with respect to (a) immaterial quantities of Hazardous Materials, (b) any Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques (which design modifications or construction techniques would have been consistent with applicable Law), (c) any costs that could have been avoided, or (d) any Hazardous Materials encountered during or in connection with the demolition of buildings, fixtures or other improvements on any parcels within the applicable Project Site.

#### **13.9.3.1 Determination of Reimbursable Amount**

**13.9.3.1.1** Developer shall be deemed to have waived the right to collect any and all costs incurred in connection with any Hazardous Materials Management and any right to obtain an extension of a Completion Deadline if TxDOT is not provided written notice of the discovery of Hazardous Materials and afforded the opportunity to inspect sites containing Hazardous Materials before any action is taken which would inhibit TxDOT's ability to ascertain, based on a site inspection, the nature and extent of the materials. In the event of an emergency involving Hazardous Materials, Developer may take such limited actions as are required by Law without advance notice to TxDOT, but shall provide such notice immediately thereafter (which in no event shall be more than 2 hours after the incident by phone and 24 hours after the incident by written notice).

**13.9.3.1.2** In cases involving reimbursement for Hazardous Materials Management under this Section 13.9.3, allowable costs shall be limited to the incremental costs incurred after completion of the testing process to determine whether Hazardous Materials are present, associated with the Hazardous Materials at issue (deducting any avoided costs such as the cost of disposal that would

have been incurred had Hazardous Materials not been present). Investigating and characterizing are included in each Price and Developer shall not be entitled to additional compensation therefor. Developer shall take all reasonable steps to minimize any such costs. Compensation shall be allowed only to the extent that Developer demonstrates to TxDOT's reasonable satisfaction that (a) the Hazardous Materials Management could not have been avoided by reasonable design modifications or construction techniques and (b) Developer's plan for the Hazardous Materials Management represents the approach which is most beneficial to the Project and the public. Developer shall provide TxDOT with such information, analyses and certificates as may be requested by TxDOT in order to enable a determination regarding eligibility for payment.

### **13.9.3.2 Time Extensions**

Developer shall not be entitled to an extension of any Completion ~~Deadline with regard to any need to investigate or characterize any Hazardous Materials~~ regardless of the total quantities. If Developer encounters Hazardous Materials within the Schematic ROW Limits which, due to no fault of Developer, results in delays to a Critical Path, then TxDOT shall bear the risk of such delay (excluding those conditions for which Developer has agreed to be responsible as described in Section 18.1.1(g)).

### **13.9.3.3 Limitations on Change Orders**

Developer shall have no right to receive any compensation for any Hazardous Materials Management resulting from a situation described in Section 18.1.1(g).

### **13.9.3.4 Insurance Proceeds**

If the cost of any Hazardous Materials Management is covered by the insurance described in Section 9, Developer shall be entitled to reimbursement of its costs from proceeds of insurance and self-insurance, up to the limits of the applicable policy, less any deductibles which shall be Developer's responsibility. To the extent that such proceeds are available, Developer shall not be entitled to payment hereunder on any other basis for such Hazardous Materials Management.

## **13.10 Change Order Records**

Developer shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in the applicable Price and the costs of other operations. Developer shall contemporaneously collect, record in writing, segregate and preserve (a) separate daily occurrence logs as required under TP Sections 2.2.4 and/or 2.4.5, together with all other data necessary to determine the costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Adjustments, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Project Schedule is in dispute.

Such data shall be provided to any dispute resolvers, TxDOT and its authorized representatives as directed by TxDOT, on forms approved by TxDOT. The cost of furnishing such reports is included in Developer's predetermined overhead and profit markups.

#### **13.10.1 Daily Work Reports and Data Collection**

Developer shall furnish TxDOT completed daily work reports for each day's Work which is to be paid for on a time and material basis. The daily time and material Work reports shall be detailed as follows:

(a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.

(b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(c) Quantities of materials, prices, and extensions.

(d) Transportation of materials.

The reports shall also state the total costs to date for the Time and Materials Change Order Work.

#### **13.10.2 Supplier's Invoices**

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports. Should said Supplier's invoices not be submitted within 60 days after the date of delivery of the materials, TxDOT shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of Work, less any discounts available.

#### **13.10.3 Execution of Reports**

All Time and Materials Change Order reports shall be signed by Developer's Project Manager.

#### **13.10.4 Adjustment**

TxDOT will compare its records with the completed daily time and material Work reports furnished by Developer and make any necessary adjustments. When these daily time and material Work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. Developer's cost records pertaining to Work paid for on a time and material basis shall be open, during all regular business

hours, to inspection or audit by representatives of TxDOT during the life of this Agreement and for a period of not less than five years after the Final Acceptance Date, and Developer shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Developer, Developer shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of TxDOT on the same terms and conditions as the cost records of Developer. Payment for such costs may be deleted if the records of such third parties are not made available to TxDOT's representatives. If an audit is to be commenced more than 60 days after the Final Acceptance Date, Developer will be given a reasonable notice of the time when such audit is to begin.

### **13.11 Matters Not Eligible for Change Orders and Waiver**

Developer acknowledges and agrees that no increase in a Price or extension of a Completion Deadline is available except in circumstances expressly provided for herein, that such price increase and time extension shall be available only as provided in this Section 13 and that Developer shall bear full responsibility for the consequences of all other events and circumstances. Matters which are Developer's exclusive responsibility include the following:

(a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Owner Design Documents, subject only to the right to a Change Order to the extent permitted by Section 13.8 or 13.9);

(b) any design changes requested by TxDOT as part of the process of approving the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals and/or applicable Laws;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);

(d) action or inaction of Developer's employees, any member of the Developer-Related Entity or Subcontractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(e) action or inaction of adjoining property owners or TxDOT's other contractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(f) groundwater levels or subsurface moisture content;

(g) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except to the extent resulting from a Force Majeure Event;

(h) any costs covered by insurance proceeds received by (or on behalf of) Developer;

(i) correction of Nonconforming Work and review and acceptance thereof by TxDOT (including rejected design submittals);

(j) failure by any Developer-Related Entity to comply with the requirements of the Contract Documents, Governmental Approvals or Laws;

(k) delays not on a Critical Path;

(l) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Developer, any failure to obtain such Governmental Approval, and compliance with the terms and conditions of all Governmental Approvals;

(m) any situations (other than Force Majeure Events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in this Agreement or arise out of the nature of the Work;

(n) fluctuations and changes in the price of labor, materials, equipment, Hardware, Software, machinery or any other item required to perform and complete the Work, except to the extent covered by Section 12.1.4 or Section 12.1.5; and

(o) all other events beyond the control of TxDOT for which TxDOT has not expressly agreed to assume liability hereunder.

Developer hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Developer of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the circumstances of this Agreement and that contingencies included in the Pilot System Prices, Hypothetical Project Segment Scenario Prices, Pilot System Maintenance Prices and Hypothetical Project Segment Scenario Maintenance Prices provided in the Proposal in Developer's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

DEVELOPER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH DEVELOPER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT DEVELOPER IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

### **13.12 Disputes**

If TxDOT and Developer agree that a request to increase a Price and/or extend any Completion Deadline by Developer has merit, but are unable to agree as to the amount of such price increase and/or time extension, TxDOT agrees to mark up the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by Developer to reduce the amount of the price increase or time extension as deemed appropriate by TxDOT. In such event, TxDOT will execute and deliver the marked-up Change Order to Developer within a reasonable period after receipt of a request by Developer to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of TxDOT and Developer to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the applicable Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by Developer of any nature arising from or relating to the Work covered by the Change Order. Developer's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Developer with respect to the disputed matter (crediting TxDOT for any corresponding reduction in Developer's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

### **13.13 Changes Not Requiring Change Order**

Changes in the Work which have no net cost effect on a Price may be approved in writing by TxDOT as a Deviation, and in such event shall not require a Change Order. Any other change in the requirements of the Contract Documents shall require either a Directive Letter or a Change Order.

### **13.14 No Release or Waiver**

**13.14.1** No extension of time granted hereunder shall release Developer's Surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of this Agreement and this Agreement shall be and shall remain in full force and effect during the continuance and until Final Acceptance unless formally suspended or terminated by TxDOT in accordance with the terms hereof. Permitting Developer to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Developer after such date, shall not constitute a waiver on the part of TxDOT of any rights under this Agreement.

**13.14.2** Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or materials specified by this Agreement after a Completion Deadline, shall be deemed to be a waiver by TxDOT of its right to terminate this Agreement for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

**13.14.3** No course of conduct or dealings between the parties nor express or implied acceptance of alterations or additions to the Work, and no claim that TxDOT has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, Developer shall undertake, at its risk, work included in any request, order or other authorization issued by a person in excess of that person's authority as provided herein, or included in any oral request. Developer shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, TxDOT may require Developer to remove or otherwise undo any such work, at Developer's sole cost.



## **SECTION 14. SUSPENSION**

### **14.1 Suspensions for Convenience**

TxDOT may, at any time and for any reason, by written notice, order Developer to suspend all or any part of the Work required under the Contract Documents for the period of time that TxDOT deems appropriate for the convenience of TxDOT. Developer shall promptly comply with any such written suspension order. Developer shall promptly recommence the Work upon receipt of written notice from TxDOT directing Developer to resume work. Any such suspension for convenience shall be considered a TxDOT-Directed Change; provided that TxDOT shall have the right to direct suspensions for convenience on an individual Pilot System and Project Segment basis not exceeding 48 hours each up to a total of 168 hours per Pilot System or Project Segment, as applicable, which shall not be considered a TxDOT-Directed Change. Adjustments of the applicable Price and Completion Deadlines shall be available for any such TxDOT-Directed Change, subject to Developer's compliance with the terms and conditions set forth in Section 13.

### **14.2 Suspensions for Cause**

TxDOT has the authority to suspend the Work by written order, wholly or in part, for Developer's failure to:

- (a) Correct conditions deemed by TxDOT to be unsafe for the Project personnel or the general public; or
- (b) Comply with any Governmental Approval, Law or otherwise carry out the requirements of the Contract Documents; or
- (c) Carry out orders of TxDOT; or
- (d) Comply with requirements for developing and implementing the Engineering Professional Services Quality Program, the Civil Construction Quality Program and the Toll Systems Services Quality Program; or
- (e) Comply with environmental requirements.

Developer shall promptly comply with any written suspension order. Developer shall promptly recommence the Work upon receipt of written notice from TxDOT directing Developer to resume work. TxDOT shall have no liability to Developer in connection with any such suspension.

### **14.3 Responsibilities of Developer During Suspension Periods**

During periods that Work is suspended, Developer shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage and shall erect necessary temporary structures, signs or other facilities required to maintain the

Project. Additionally, Developer shall continue other Work that has been or can be performed at a Project Site or offsite during the period that Work is suspended.

## **SECTION 15. TERMINATION FOR CONVENIENCE**

### **15.1 Termination**

TxDOT may, at any time, terminate this Agreement and the performance of the Work by Developer in whole or in part (including with respect to a particular Pilot System or Project Segment), if TxDOT determines, in its sole discretion, that a termination is in TxDOT's best interest. TxDOT shall terminate by delivering to Developer a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this Agreement shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

Developer acknowledges and agrees that TxDOT has no obligation to issue Pilot System NTP 1 or any other NTP hereunder, and further agrees that unless and until Pilot System NTP 1 or such other NTP is issued, TxDOT shall have no liability to Developer hereunder.

### **15.2 Developer's Responsibilities After Receipt of Notice of Termination**

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by TxDOT, Developer shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 15:

**15.2.1** Stop Work as specified in the notice.

**15.2.2** Notify all affected Subcontractors that this Agreement is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by TxDOT.

**15.2.3** Enter into no further Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.

**15.2.4** Unless instructed otherwise by TxDOT, terminate all Subcontracts to the extent they relate to the Work terminated.

**15.2.5** Assign to TxDOT in the manner, at the times, and to the extent directed by TxDOT, all of the right, title, and interest of Developer under the Subcontracts so terminated, in which case TxDOT will have the right, in its sole discretion, to accept performance, settle or pay any termination settlement proposal arising out of the termination of such Subcontract.

**15.2.6** Subject to the prior written approval of TxDOT, settle all outstanding liabilities and all termination settlement proposals arising from termination of Subcontracts that are required to be terminated hereunder.

**15.2.7** No later than 90 Days from the effective date of termination, unless extended in writing by TxDOT upon written request of Developer within this 90-Day period, provide TxDOT with an inventory list of all materials, supplies, equipment, Hardware and Software previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to TxDOT, and such other information as TxDOT may request; and transfer title and deliver to TxDOT through bills of sale or other documents of title, as directed by TxDOT, (a) the Work in process, completed Work, supplies, equipment, any Hardware, Software and other material produced or acquired for the Work terminated that has not already been provided to TxDOT, and (b) the Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to TxDOT if the Work had been completed.

**15.2.8** Complete performance in accordance with the Contract Documents of all Work not terminated.

**15.2.9** Take all action that may be necessary, or that TxDOT may direct, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the Work and (c) equipment, machinery, materials, Hardware, Software and property related to the Project that is in the possession of Developer and in which TxDOT has or may acquire an interest.

**15.2.10** As authorized by TxDOT in writing, use its best efforts to sell, at reasonable prices, any property of the types referred to in Section 15.2.7; provided, however, that Developer (a) is not required to extend credit to any purchaser, and (b) may acquire for itself the property under the conditions prescribed and at prices approved by TxDOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by TxDOT under the Contract Documents or paid in any other manner directed by TxDOT.

**15.2.11** If requested by TxDOT, withdraw from the portions of the Project Site designated by TxDOT and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, Developer and any Subcontractor in the performance of the Work as TxDOT may direct.

**15.2.12** Take other actions directed by TxDOT.

### **15.3 Acceptance**

**15.3.1** Acceptance of this Agreement as hereinafter specified shall not relieve Developer of responsibility for damage to materials. Developer shall continue to be responsible for damage to materials after issuance of the Notice of Termination for Convenience or a Notice of Partial Termination for Convenience, except as follows:

(a) Developer's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when TxDOT's Authorized Representative certifies that those materials have been stored in the manner and at the locations directed by TxDOT.

(b) Developer's responsibility for damage to materials purchased by TxDOT subsequent to the issuance of the notice that this Agreement is to be terminated shall terminate when title and delivery of those materials has been taken by TxDOT.

**15.3.2** When TxDOT's Authorized Representative determines that Developer has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the applicable portion of the Project for termination, TxDOT's Authorized Representative will recommend that TxDOT formally accept such Work, and immediately upon and after such acceptance by TxDOT, Developer will not be required to provide for continuing safety, security and maintenance at the applicable Project Site.

#### **15.4 Settlement Proposal**

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Developer shall submit a final termination settlement proposal to TxDOT in the form and with the certification prescribed by TxDOT. Developer shall submit the proposal promptly, but no later than 90 Days from the effective date of termination unless Developer has requested a time extension in writing within such 90-Day period and TxDOT has agreed in writing to allow such an extension. Developer's termination settlement proposal shall then be reviewed by TxDOT and acted upon, returned with comments, or rejected. If Developer fails to submit the proposal within the time allowed, TxDOT may determine, on the basis of information available, the amount, if any, due Developer because of the termination and shall pay Developer the amount so determined, and Developer shall be bound by TxDOT's determination.

#### **15.5 Amount of Negotiated Termination Settlement**

Developer and TxDOT may agree, as provided in Section 15.4, upon the whole or any part of the amount or amounts to be paid to Developer by reason of the total or partial termination of Work for convenience pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and accepted by TxDOT. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Price for the Project as a whole or, individually, for the applicable Pilot System(s) or Project Segment(s) with respect to which a total or partial termination for convenience has occurred, as reduced by the amount of payments otherwise made and the applicable Price of Work not terminated. Upon determination of the settlement amount this Agreement will be amended accordingly, and Developer will be paid the agreed amount as described in this Section 15.5. Nothing in Section 15.6 prescribing the amount to be paid to Developer in the event that Developer and TxDOT fail to agree upon the whole amount to be paid to Developer by reason of the termination of Work pursuant to this Section 15.5,

shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Developer pursuant to this Section 15.5. TxDOT's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve Developer from its obligations with respect thereto, including Warranties, or affect the rights of TxDOT or Developer under any Performance Bond(s), Payment Bond(s), Maintenance Bond(s), other bonds and/or letters of credit as to such completed or non-terminated Work.

## **15.6 No Agreement as to Amount of Termination Settlement**

If Developer and TxDOT fail to agree upon either all or some portion of the amount to be paid Developer by reason of the termination of Work for convenience pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by TxDOT in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 15.4 and 15.5:

**15.6.1** TxDOT will pay Developer the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) Developer's actual reasonable out-of-pocket cost, without profit, for all Work performed, including mobilization (not to exceed the maximum amounts permitted hereunder), demobilization, work in process and work done to secure the applicable portion of the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance, bond or letter of credit premiums, deposits or similar items, as established to TxDOT's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials, supplies, Hardware, Software and equipment to be retained by Developer, amounts realized by the sale of such items, and for other appropriate credits against the cost of the Work, including those deductions which would be permitted in connection with a Final Payment. When, in the opinion of TxDOT's Authorized Representative, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective, Nonconforming Work or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.

(b) A sum, as profit on clause (a) above, determined by TxDOT to be fair and reasonable, but in no event to exceed 4% of the amount determined under clause (a); however, if it appears that Developer would have sustained a loss on the entire contract had it been completed, TxDOT shall allow no profit under this clause (b) and shall reduce the settlement to reflect the indicated rate of loss;

(c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2.6, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for

Convenience or Notice of Partial Termination for Convenience of Work under this Agreement, which amounts shall be included in the cost on account of which payment is made under clause (a) above;

(d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2.9 and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under this Agreement, including the reasonable cost to Developer of handling material returned to the vendor, delivered to TxDOT or otherwise disposed of as directed by TxDOT, and including a reasonable allowance for Developer's administrative costs in determining the amount payable due to termination of this Agreement.

**15.6.2** Developer acknowledges and agrees that, in the event of termination under this provision, it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.6.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon a total or partial termination of this Agreement. The total amount to be paid to Developer, exclusive of costs described in Sections 15.6.1(c) and (d), may not exceed the total Price for the Project as a whole or, individually, for the applicable Pilot System(s) or Project Segment(s) with respect to which a total or partial termination for convenience has occurred, less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance, letter of credit or bond premiums, deposits or other items which were previously passed through to TxDOT by Developer, such refund shall be paid directly to TxDOT or otherwise credited to TxDOT. Except to the extent that TxDOT will have expressly assumed the risk of loss, there will be excluded from the amounts payable to Developer under Section 15.6.1, the fair value, as determined by TxDOT, of equipment, supplies, Hardware, Software, machinery, materials and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to TxDOT, or sold pursuant to Section 15.2.10. Information contained in the EPDs may be a factor in determining the value of the Work terminated. Upon determination of the amount of the termination payment, this Agreement shall be amended to reflect the agreed termination payment, Developer shall be paid the agreed amount, and the applicable Price shall be reduced to reflect the reduced scope of Work.

**15.6.3** If a termination hereunder is partial as to a particular Pilot System or Project Segment, Developer may file a proposal with TxDOT for an equitable adjustment of the applicable Price for the continued portion of this Agreement. Any proposal by the Developer for an equitable adjustment under this clause shall be requested within 90 Days from the effective date of termination unless extended in writing by the TxDOT. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to this Agreement.

## **15.7 Reduction in Amount of Claim**

The amount otherwise due Developer under this Section 15 shall be reduced by (a) the amount of any claim which TxDOT may have against any Developer-Related Entity in connection with this Agreement, (b) the agreed price for, or the proceeds of sale, of

property, materials, supplies, equipment, Hardware, Software or other things acquired by Developer or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to TxDOT, (c) all unliquidated advance or other payments made to or on behalf of Developer applicable to the terminated portion of the Work or Agreement, (d) amounts that TxDOT deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners, (e) amounts payable to TxDOT as Liquidated Damages or Stipulated Damages; (f) amounts that TxDOT deems advisable, in its sole discretion to retain to cover any existing or anticipated Losses incurred by TxDOT; (g) the cost of repairing any Nonconforming Work (or, in TxDOT's sole discretion, the amount of the credit to which TxDOT is entitled under Section 5.6.2) and (h) any amounts due or payable by Developer to TxDOT.

## **15.8 Payment**

TxDOT may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Developer in connection with the terminated portion of this Agreement, whenever in the opinion of TxDOT the aggregate of such payments shall be within the amount to which Developer will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Developer to TxDOT upon demand together with interest at the rate of the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law.

## **15.9 Subcontracts**

**15.9.1** Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 15.

**15.9.2** Each Major Subcontract shall provide that, in the event of a termination for convenience by TxDOT, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

## **15.10 No Consequential Damages**

Under no circumstances shall Developer be entitled to anticipatory or unearned profits or consequential, special, indirect or other damages as a result of a termination or partial termination under this Section 15. The payment to Developer determined in accordance with this Section 15 constitutes Developer's exclusive remedy for a termination hereunder.



### **15.11 No Waiver**

Anything contained in this Agreement to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages which TxDOT may have and TxDOT may pursue any cause of action which it may have at Law, in equity or under the Contract Documents.

### **15.12 Dispute Resolution**

The failure of the parties to agree on amounts due under this Section 15 shall be a dispute to be resolved in accordance with Section 19.

### **15.13 Allowability of Costs**

All costs claimed by Developer under this Section 15 shall be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

## SECTION 16. DEFAULT

### 16.1 Default of Developer

#### 16.1.1 Events and Conditions Constituting Default

Developer shall be in default under this Agreement upon the occurrence of any one or more of the following events or conditions:

(a) Developer fails promptly to begin the Work for a Pilot System and/or a Project Segment under the Contract Documents following issuance of an NTP for such Pilot System and/or Project Segment, or

(b) Developer fails to resume performance of Work for the Project as a whole or, individually, for a Pilot System or a Project Segment which has been suspended or stopped, within a reasonable time after receipt of notice from TxDOT to do so or (if applicable) after cessation of the event preventing performance; or

(c) Developer fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein for the design, installation, integration, construction and maintenance of the Project, or refuses to correct, remove and replace rejected materials or Nonconforming Work or unacceptable Work, or fails to achieve Final Acceptance within at least 60 Days following a Final Acceptance Completion Deadline; or

(d) Developer suspends, ceases, stops or abandons the Work for the Project as a whole or, individually, for a Pilot System or a Project Segment, or fails to continuously and diligently prosecute the Work for the Project as a whole or, individually, for a Pilot System or a Project Segment (exclusive of work stoppage due to termination by TxDOT, or due to and during the continuance of a Force Majeure Event or suspension by TxDOT); or

(e) Developer fails to maintain the insurance, bonds and letters of credit required hereunder; or

(f) Developer attempts or purports to assign or transfer the Contract Documents or any right or interest herein, except as expressly permitted under Section 24.4; or

(g) Developer fails, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable Law, or shall have failed to comply with any Law or failed reasonably to comply with the instructions of TxDOT consistent with the Contract Documents, or fails to make payment to TxDOT when due of any amounts owing to TxDOT under this Agreement; or

(h) Developer breaches any other agreement, covenant, representation or warranty contained in the Contract Documents; or

(i) Developer or any Guarantor fails to discharge or obtain a stay within ten Days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate (provided that for purposes hereof, posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay); or

(j) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect; or

(k) Any final judgment is issued holding Developer or any Guarantor liable for an amount in excess of \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act; or

(l) Any representation or warranty made by Developer or any Guarantor in the Contract Documents or any certificate, schedule, instrument or other document delivered by Developer pursuant to the Contract Documents was false or materially misleading when made; or

(m) Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any of Developer's partners, members or joint venturers, any other Major Participants identified in Proposal Form B-1, or any Surety, Guarantor or Letter of Credit Bank; or

(n) An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any bankruptcy, insolvency or other similar Laws now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 Days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any of Developer's partners, members or joint venturers, any other Major Participants identified in Proposal Form B-1, or any Surety, Guarantor or Letter of Credit Bank ; or

(o) Developer is a party to fraud; or

- (p) A Persistent Breach occurs.

### **16.1.2 Notice and Opportunity to Cure**

(a) Except for a breach declared under clause (p) above, Developer and Surety shall be entitled to 15 Days written notice and opportunity to cure any breach before an Event of Default is declared under clauses (a) through (d) and clauses (g) through (i) of Section 16.1.1, provided that no such notice and opportunity to cure is required for any breach which by its nature cannot be cured (which shall include the items described in clauses (e) through (f) and clauses (j) through (o) of Section 16.1.1. Failure to provide notice to Surety shall not preclude TxDOT from exercising its remedies against Developer. If a breach is capable of cure but, by its nature, cannot be cured within 15 Days, as determined by TxDOT, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as Developer commences such cure within such 15-Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed 60 Days in total unless TxDOT, in its sole discretion, agrees in writing to extend such time.

(b) With respect to a breach declared under clause (p), TxDOT may declare an anticipatory breach under Section 16.5, in which case the provisions of Section 16.5 shall apply.

(c) Notwithstanding the foregoing, TxDOT may, without notice and without awaiting lapse of the period to cure any default, in the event of existence of a condition on or affecting the Project which TxDOT believes poses an immediate and imminent danger to public health or safety, rectify the dangerous condition at Developer's cost, and so long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose TxDOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that TxDOT has a paramount public interest in providing and maintaining safe public use of and access to the Project. TxDOT's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

## **16.2 Remedies**

**16.2.1** If any breach described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, TxDOT may declare that an "Event of Default" has occurred and notify Developer to discontinue the Work under this Agreement as a whole, or with respect to any individual Pilot System(s) or Project Segment(s) with respect to which the Event of Default has occurred. The declaration of an Event of Default shall be in writing and given to Developer and Surety. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract Documents, the Performance Bond(s), the Maintenance Bond(s) and any letters of credit, if an Event of Default shall occur, TxDOT shall have the following rights without further notice and without waiving or releasing

Developer from any obligations and Developer shall have the following obligations (as applicable):

(a) TxDOT may terminate this Agreement or a portion thereof (including with respect to any individual Pilot System(s) or Project Segment(s) with respect to which the Event of Default has occurred), including Developer's rights of entry upon, possession, control, operation and maintenance of the Project, in which case, the provisions of Sections 15.2 and 15.3 shall apply;

(b) If and as directed by TxDOT, Developer shall withdraw from all Project Sites specified by TxDOT and shall remove, at TxDOT's direction, materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Developer-Related Entity in the performance of the Work;

(c) Developer shall deliver to TxDOT possession of any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, Hardware, Software, electronic files and other documents and facilities related to the Project that TxDOT deems necessary for completion of the Work;

(d) Developer shall confirm the assignment to TxDOT of the Subcontracts requested by TxDOT and Developer shall terminate, at its sole cost, all other Subcontracts;

(e) TxDOT may deduct from any amounts payable by TxDOT to Developer such amounts payable by Developer to TxDOT, including reimbursements owing, Liquidated Damages, Stipulated Damages, an amount TxDOT deems advisable to cover any existing or threatened claims, Liens and stop notices of Subcontractors, laborers, or Utility Owners against Developer or against TxDOT, the amount of any Losses that have accrued, the cost to complete or remediate uncompleted Work or Nonconforming Work or other damages or amounts that TxDOT has determined are or may be payable to TxDOT under the Contract Documents;

(f) TxDOT may draw or realize upon any letter of credit, bonds, funds, collateral or security then held by TxDOT;

(g) TxDOT shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;

(h) TxDOT may appropriate any or all materials, supplies, Hardware, Software and equipment on each Project Site as may be suitable and acceptable and may direct the Surety to complete this Agreement or may enter into an agreement for the completion of this Agreement according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the requirements of the Contract Documents, including completion of the Work by TxDOT; and/or

(i) If TxDOT exercises any right to perform any obligations of Developer, in the exercise of such right TxDOT may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as TxDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials, equipment, Hardware and Software as may be required for the purpose of completing such work; (iii) execute all applications, certificates and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

**16.2.2** If an Event of Default shall have occurred, Developer, Surety and each Guarantor shall be jointly and severally liable to TxDOT (in addition to any other damages under the Contract Documents except for those costs intended to be covered by ~~Liquidated Damages and Stipulated Damages payable hereunder~~ for all costs reasonably incurred by TxDOT or any party acting on TxDOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). The preceding sentence shall expressly include all maintenance Work and Work to be performed during the Maintenance Term, as extended by the exercise of all Maintenance Options. Upon occurrence of an Event of Default and so long as it continues, TxDOT shall be entitled to withhold all or any portion of further payments to Developer until the later of (i) the latest Final Acceptance Date occurs for any Pilot System or Project Segment with respect to which an NTP has been issued or (ii) the date on which TxDOT otherwise accepts such Pilot System or Project Segment as complete or determines that it will not proceed with completion, at which time TxDOT will determine whether and to what extent Developer is entitled to further payments. Promptly following such Final Acceptance Date or the date on which TxDOT otherwise accepts such Pilot System or Project Segment as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and TxDOT shall notify Developer, its Surety and each Guarantor in writing of the amount, if any, that Developer, its Surety and each Guarantor shall pay TxDOT or TxDOT shall pay Developer or its Surety with respect thereto. All costs and charges incurred by TxDOT, including attorneys', consultants', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents and any other deduction that TxDOT would be entitled to make with respect to a Final Payment of the Price (including those set forth in Section 12.4), will be deducted from any moneys due or which may become due Developer or its Surety. If such expense exceeds the sum which would have been payable under this Agreement, then Developer and its Surety(ies) and each Guarantor shall be liable and shall pay to TxDOT the amount of such excess. If the Surety or Guarantor fails to pay such amount immediately upon TxDOT's demand, then TxDOT shall be entitled to collect interest from the Surety or Guarantor on the amounts TxDOT is required to pay in excess of the remaining balance of the applicable Prices for which an NTP has been issued. The interest rate which the Surety and each Guarantor shall pay shall be the lesser of (a) 12% per annum or (b) the maximum rate allowable under applicable Law. The interest rate shall accrue on all amounts TxDOT has had to pay

excess of the remaining balance of the applicable Prices for which an NTP has been issued from the date of TxDOT payment.

**16.2.3** Developer acknowledges that if a default under Section 16.1.1(m) or (n) occurs, such event could impair or frustrate Developer's performance of the Work. Accordingly, Developer agrees that upon the occurrence of any such event, TxDOT shall be entitled to request of Developer, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 Days of delivery of the request shall entitle TxDOT to terminate this Agreement and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, TxDOT shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from TxDOT's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under this Agreement and the Performance Bond(s), the Warranty Bonds, the Maintenance Bonds and any letter of credit.

**16.2.4** In lieu of the provisions of this Section 16.2 for terminating this Agreement and completing the Work, TxDOT may, in its sole discretion, pay Developer for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Agreement. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Developer.

**16.2.5** If this Agreement is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

**16.2.6** The exercise or beginning of the exercise by TxDOT of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies, each of which shall be cumulative.

**16.2.7** If TxDOT suffers damages as a result of Developer's breach or failure to perform an obligation under the Contract Documents, then, subject to the limitation on liability contained in Section 17.6, TxDOT shall be entitled to recovery of such damages from Developer regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

**16.2.8** Developer and Surety shall not be relieved of liability for continuing Liquidated Damages or Stipulated Damages on account of a default by Developer hereunder or by TxDOT's declaration of an Event of Default, or by actions taken by TxDOT under this Section 16.2.



**16.2.9** TxDOT's remedies with respect to Nonconforming Work shall include the right to accept such Work and receive payment as provided in Section 5.6.2 in lieu of the remedies specified in this Section 16.

### **16.3 Failure to Comply Caused by Delay Event**

Notwithstanding anything to the contrary contained herein, the Parties agree that the term "Event of Default" shall specifically exclude Developer's failure to meet a Completion Deadline, if such failure is caused solely and directly by an event or events beyond Developer's control, which event was not due, in whole or in part, to the breach, default, fault, act, omission, negligence, recklessness, gross negligence or willful misconduct of any Developer-Related Entity, and which delay could not have been avoided by due diligence and use of reasonable efforts by Developer. The foregoing circumstance is referred to herein as a "Delay Event," with the understanding that the term "Delay Event" ~~does not apply in cases where the delay to the Critical Path is resolved by extension of the~~ applicable Completion Deadline(s) under Section 13. Delay Events shall only apply to the particular Pilot System or Project Segment with respect to which it has occurred and shall not apply to any other Pilot System or Project Segment or any other aspect of the Work. If Developer fails to meet a Pilot System Schedule or a Project Segment Schedule as a result of a Delay Event, TxDOT shall not be entitled to terminate this Agreement or exercise any of the remedies described in Section 16.2 for such failure of Developer to perform, except as follows: (i) if Developer fails to perform or delays the performance of any Work as the result of a Delay Event, then TxDOT shall have the right, but not the obligation, to cause third parties to perform such Work, and, in such event, the cost of such Work shall be deducted from the applicable Price; and (ii) occurrence of a Delay Event shall not excuse Developer from its obligation to implement a Recovery Schedule or from its obligation to pay damages, including Liquidated Damages, for failure to achieve the applicable System Acceptance, Punch List Acceptance or Final Acceptance by the applicable Completion Deadline; provided, however, that to the extent that Developer is excused from payment of Liquidated Damages by reason of Section 17.6 or otherwise, TxDOT shall be entitled to terminate this Agreement and exercise any and all remedies available. Developer shall promptly notify TxDOT in writing of any occurrence of a Delay Event and of the steps that Developer intends to implement to mitigate the delays arising therefrom.

### **16.4 Right to Stop Work for Failure by TxDOT to Make Undisputed Payment**

Developer shall have the right to stop Work if TxDOT fails to make an undisputed payment due hereunder within 15 business days after TxDOT's receipt of written notice of nonpayment from Developer. Any such work stoppage shall be considered a suspension for convenience under Section 14. Developer shall not have the right to terminate this Agreement for default as the result of any failure by TxDOT to make an undisputed payment due hereunder, but Developer shall have the right to declare a termination for convenience under Section 15 by delivering to TxDOT a written notice of termination specifying its effective date, if such nonpayment continues for more than 180 Days after TxDOT's receipt of written notice of nonpayment from Developer.



## 16.5 Anticipatory Breach

**16.5.1** Developer recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous breaches or failures to perform by Developer, even if individual instances are not material or are eventually cured, will undermine the confidence and trust essential to the success of the public-private partnering under this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to TxDOT. Developer acknowledges and agrees that the measures for determining the existence of such a pattern or practice described in the definition of Persistent Breach are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

**16.5.2** Accordingly, in the event TxDOT issues a notice under Section 16.1.2 with respect to a breach under Section 16.1.1(p) for a Persistent Breach, TxDOT shall have the right to declare an anticipatory breach of this Agreement by Developer. So long as the circumstances under the definition of Persistent Breach have occurred, any such declaration of anticipatory breach shall be valid, conclusive and binding, and such breach shall be deemed material even if such items comprising the Persistent Breach shall have been cured.

**16.5.3** Developer shall have a reasonable period of time, in no event to exceed the time period for each stated below (measured from the date TxDOT issues notice of anticipatory breach), to fully and completely deliver all, and not less than all, of the following assurances of performance, which Developer agrees and acknowledges are (i) the minimum necessary to tender adequate assurance of performance and (ii) reasonable, fair and appropriate to bring to a halt the pattern and practice of continuing, repeated and numerous breaches and failure to perform:

(a) Full and complete cure of all outstanding Developer defaults, to be completed no later than 60 Days (provided, however, that the foregoing shall not modify or limit TxDOT's rights to declare an Event of Default or exercise rights and remedies with respect thereto or to other breaches under Section 16.1.1 that have no or a shorter cure period than 60 Days);

(b) A new Project Manager, new PSQP personnel and managers, new TSSQP personnel and managers, new CQP personnel and managers and other new Key Personnel to the extent required by TxDOT, each replacement to be acceptable to TxDOT in its sole discretion, to be completed no later than 60 Days;

(c) A revised and restated PSQP, TSSQP, and CQP, meeting best industry standards and practices, in form and content acceptable to TxDOT in its good faith discretion, to be completed and delivered no later than 60 Days. As part of the revised plans, TxDOT may, in its sole discretion, increase the level of TxDOT involvement and oversight, at the sole cost and expense of Developer and such involvement shall not be cause for any relief or rights on the part of Developer under the Contract Documents or otherwise;

(d) Replacement of each subcontractor that TxDOT reasonably determines is or was a material source of any continuing, repetitive or chronic breach or failure to perform (including any subcontractor with responsibility for quality assurance or quality control), with a substitute subcontractor acceptable to TxDOT in its good faith discretion, to be completed no later than 60 Days; and

(e) Notwithstanding any limitation on the maximum amount of the Letter of Credit set forth under Section 8.2.1 or otherwise, Developer shall increase the maximum amount available under the Letter of Credit by 100%, to be completed within 15 Days

**16.5.4** If for any reason Developer fails to complete any element of the assurances of performance described in this Section 16.5 within the applicable time period, the same shall constitute an uncured material Event of Default. Thereupon, ~~TxDOT, without further notice and cure period, shall be able to exercise all rights and remedies under Section 16.2 and otherwise under this Agreement, at law or in equity.~~

**16.5.5** Nothing contained in this Section 16.5 shall modify, alter, discharge or release Developer from any obligations to pay Stipulated Damages or other compensation under this Agreement.

## **SECTION 17. LIQUIDATED DAMAGES, STIPULATED DAMAGES AND LIMITATION OF LIABILITY**

### **17.1 Liquidated Damages Generally**

Developer understands and agrees that if Developer fails to complete the Work in accordance with the Contract Documents, TxDOT will suffer substantial Losses. Developer agrees that it shall be liable for all such Losses. Developer and TxDOT have agreed to require payment of Liquidated Damages with respect to certain types of Losses. Developer acknowledges and agrees that the Liquidated Damages are intended to compensate TxDOT solely for Developer's failure to meet the System Acceptance Deadline set forth in Section 4.2.1 and shall not excuse Developer from liability from any other breach of requirements of the Contract Documents, including any failure of the Work to conform to applicable requirements. ~~Developer shall not be liable for actual damages in~~ addition to the Liquidated Damages for Developer's failure to meet the System Acceptance Deadline. The fact that TxDOT has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a System Acceptance Deadline shall not preclude TxDOT from exercising its other rights and remedies respecting the delay set forth in Section 16.2 and, if applicable, Section 16.3 or elsewhere in this Agreement, other than the right to collect other damages due solely to the delay, except that TxDOT agrees not to exercise such other rights and remedies respecting the delay so long as (a) the applicable Pilot System Schedule or Project Segment Schedule demonstrates that Developer is capable of meeting such System Acceptance Deadline within 90 Days after the Completion Deadline and (b) Developer diligently performs the Work in accordance with said schedule.

### **17.2 Amount of Liquidated Damages**

Developer acknowledges and agrees that because of the unique nature of the Project and each Pilot System and Project Segment, the importance of establishing the viability of the System through the development of each Pilot System, the fact that the Project Segments are essential parts of the Texas highway system, and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Developer to achieve each System Acceptance by the applicable System Acceptance Deadline, it is impracticable and extremely difficult to ascertain and determine the actual Losses which would accrue to TxDOT and the public in such event. Therefore, Developer shall pay TxDOT a liquidated amount (the "Liquidated Damages") as deemed compensation to TxDOT for such Losses. Developer shall pay TxDOT Liquidated Damages for each Day after the applicable System Acceptance Deadline and through the date of System Acceptance, but not to exceed 365 Days, in the amount set forth in Exhibit Y for each Pilot System, and for each Project Segment, Developer shall pay TxDOT Liquidated Damages in a dollar amount per Day to be set forth in the relevant Project Segment Supplement, determined by TxDOT in accordance with the methodology described for the Pilot System Liquidated Damages in Exhibit Y, but not to exceed 365 Days. Notwithstanding the occurrence of System Acceptance, if for any reason it is subsequently determined that Developer's representations regarding the satisfaction of the conditions to System

Acceptance of any Pilot System or Project Segment were materially incorrect and TxDOT revokes such System Acceptance, then the Liquidated Damages period shall be reinstituted, commencing from the date that such System Acceptance is revoked, but not to exceed 365 Days total when aggregated with any Liquidated Damages paid by Developer prior to the initial System Acceptance.

### **17.3 Reasonableness of Liquidated Damages**

Developer acknowledges and agrees that the foregoing damages have been set based on an evaluation by TxDOT of damages to TxDOT and the public caused by late System Acceptance. Developer and TxDOT agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix Developer's costs and to avoid later disputes over which items are properly chargeable to Developer. It is understood and agreed by Developer that any Liquidated Damages payable in accordance with Section 17.2 are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Developer further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

### **17.4 Stipulated Damages**

#### **17.4.1 Stipulated Damages Generally**

Developer understands and agrees that if the Performance Requirements are not met for any Pilot System or Project Segment at any time after System Acceptance, TxDOT will suffer substantial Losses. Developer agrees that it shall be liable for all such Losses to the extent set forth in this Section 17.4.1 and elsewhere in this Agreement. Developer and TxDOT have agreed to stipulate to a process to determine the amount of damages payable for such failure. Developer acknowledges and agrees that such Stipulated Damages are intended to compensate TxDOT solely for its damages caused by the failure to meet the Performance Requirements, and shall not excuse Developer from liability to correct any defects in the Pilot System or Project Segment or from any other breach of requirements of the Contract Documents. TxDOT agrees to accept Stipulated Damages as its sole compensation for damages caused by such failure, provided that TxDOT shall not be precluded from exercising its other rights and remedies respecting such failure, including requiring Developer to make adjustments to the Pilot System or Project Segment that will cause it to meet the Performance Requirements after TxDOT's written notice to Developer of the failure.

#### **17.4.2 Amount of Stipulated Damages**

Developer acknowledges and agrees that because of the unique nature of the Project and each Pilot System and Project Segment, and the fact that performance of the System in conformance with the Performance Requirements is essential to TxDOT's ability to collect toll revenue to enable it to continue to finance, construct, operate and maintain

and improve the Texas highway system, it is not possible to ascertain and determine the actual Losses, including lost toll revenues, which would accrue to TxDOT and the public from such failure. Therefore, commencing upon the applicable System Acceptance date, Developer shall pay to TxDOT an amount determined as follows (the "Stipulated Damages") as deemed compensation to TxDOT for lost toll revenues.

(a) With respect to any failure to meet the Performance Requirements set forth in the Technical Provisions for any Pilot System or Project Segment, including those set forth in Section 4.2 and in Table 1 and Table 2 of the Technical Provisions, the parties hereby agree that the Stipulated Damages payable for lost toll revenues shall be calculated based upon a comparison of revenues received by TxDOT during the period of failure to meet the Performance Requirements and revenues received during a comparable prior period determined by TxDOT; provided, however, that if the Project Segment does not have at least 12 months of operating history from which to compare, ~~Stipulated Damages shall be determined by reference to the traffic and revenue study estimates for the period of time in question.~~ For example, if during the period in which the System fails to meet the Performance Requirements TxDOT collects \$100 in toll revenues with respect to the failed System, and during a comparable prior period TxDOT collected \$1,000, the Stipulated Damages for the failure to meet the Performance Requirements for the period in question would be \$900.

(b) If during any calendar month, the mean time to respond to a maintenance call or the mean time to complete repairs exceeds the time stated in TP Section 4.5.4, then (a) for each Pilot System, Developer shall pay TxDOT the amount calculated below for each hour or portion thereof (with partial hours rounded up to the nearest quarter hour), that the total number of hours of response time exceeds the required mean time to respond multiplied by the number of response incidents plus the total number of hours of repair time that exceeds the required mean time to repair multiplied by the number of repair incidents for such Pilot System, and (b) for each Project Segment, Developer shall pay TxDOT a dollar amount per hour to be set forth in the relevant Project Segment Supplement. Expressed as a formula, Stipulated Damages for Developer's failure to meet the required mean time to respond to a maintenance call or to complete repairs with the required mean time to complete repairs shall equal:

$$[(TMTRMC - RMTRMC)NRI \times \$100] = \text{damages for failure to meet required mean time to respond}$$

$$[(TMTR - RMTR)NRI \times \$100] = \text{damages for failure to meet required mean time to complete repairs}$$

where:

TMRTMC = Total Mean Time to Respond to Maintenance Call;

RMTRMC = Required Mean Time to Respond to Maintenance Call;

NRI = Number of Response Incidents (with each lane affected counting as one incident)

TMTR = Total Mean Time to Repair

RMTR = Required Mean Time to Repair.

Developer may be liable for Stipulated Damages as a result of either or both of the foregoing calculations. In no event shall the foregoing calculations ever be a negative number or result in Developer being entitled to additional payment from TxDOT (e.g., as a result of a faster repair than required). Developer understands and agrees that any Stipulated Damages payable in accordance with this Section 17.4.2 are in the nature of stipulated damages and not a penalty and that the methodology for determining such sums was established based on the parties' agreement that the amounts so determined will constitute a reasonable approximation of the actual damages from lost toll revenues that TxDOT will accrue as a result of the circumstances giving rise to such Stipulated Damages. Developer further acknowledges and agrees that Stipulated Damages may be owing even though no Event of Default has occurred.

## **17.5 Payment; Offset; Reduction; Waiver**

**17.5.1** Liquidated Damages and Stipulated Damages shall be payable by Developer to TxDOT within 10 Days after Developer's receipt of an invoice therefor from TxDOT.

**17.5.2** TxDOT shall have the right to deduct any amount owed by Developer to TxDOT hereunder (i) from any amounts owed by TxDOT to Developer, including any Retainage which may be payable by TxDOT to Developer pursuant to Section 12.3.1; and/or (ii) by tendering or drawing upon the Performance Bond provided for the relevant Pilot System or Project Segment pursuant to Section 8.1.1 or Section 8.1.4 and/or any Letter of Credit provided pursuant to Section 8.2 (whether applicable to the Pilot System or Project Segment affected or not). In the event of any such deduction from the Retainage for a Pilot System or Project Segment, or draw against a letter of credit provided with respect to a Pilot System or Project Segment, Developer shall replenish the applicable Retainage and reinstate the amount available to draw under the relevant letter of credit as required by Section 8.2, Section 12.3.1.6 and Section 12.3.1.7.

**17.5.3** Permitting or requiring Developer to continue and finish the Work or any part thereof after a Completion Deadline or notwithstanding any failure to meet the Performance Requirements, as applicable, shall not act as a waiver of TxDOT's right to receive Liquidated Damages or Stipulated Damages hereunder or any rights or remedies otherwise available to TxDOT.

## **17.6 Limitation of Developer's Liability**

To the extent permitted by applicable Law, TxDOT will not seek indemnification and defense under Section 18 or to recover damages (including actual, indirect, special, consequential, multiple or punitive damages) from Developer resulting from breach of this Agreement (whether arising in contract, negligence or other tort, or any other theory of law) in excess of the sum of (a) all those costs reasonably incurred by TxDOT or any party

acting on TxDOT's behalf in completing or correcting the Work or having the Work completed or corrected by another Person, plus (b) an amount equal to the greater of (i) \$12,500,000.00 (which amount shall specifically include any Liquidated Damages and Stipulated Damages paid pursuant to this Section 17 as well as any payments made by Developer pursuant to Section 18) or (ii) 20% of the aggregate of the Pilot System Prices and Project Segment Prices for Work for which an NTP has been issued hereunder (including Pilot Systems and Project Segments for which System Acceptance, Punch List Acceptance and/or Final Acceptance have occurred) ; provided, however, that in no event shall the amount described in this clause (b) ever be required to exceed \$30,000,000; plus (c) any amounts paid by Developer which are covered by insurance proceeds; plus (d) all Losses incurred by any Indemnified Party relating to or arising out of any illegal activities, fraud, criminal conduct, gross negligence or willful misconduct on the part of any Developer-Related Entity; and plus (e) work required or arising under the Warranties.

## SECTION 18. INDEMNIFICATION

### 18.1 Indemnifications by Developer

**18.1.1** SUBJECT TO SECTION 17.6, AND SECTION 18.1.3, DEVELOPER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS TXDOT, THE MEMBERS OF THE COMMISSION, FHWA, THE PROJECT MANAGEMENT CONSULTANT AND THEIR SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, LIABILITIES AND RESPONSE COSTS, INCLUDING ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OF PROPERTY AND INCLUDING PENALTIES, FINES, ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN CONNECTION WITH THE ENFORCEMENT OF THIS INDEMNITY, ARISING OUT OF, RELATING TO OR RESULTING FROM:

(a) THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY ANY DEVELOPER-RELATED ENTITY; AND/OR

(b) THE FAILURE OR ALLEGED FAILURE BY ANY DEVELOPER-RELATED ENTITY TO COMPLY WITH THE GOVERNMENTAL APPROVALS, ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER GOVERNMENTAL RULES (INCLUDING GOVERNMENTAL RULES REGARDING HAZARDOUS MATERIALS MANAGEMENT); AND/OR

(c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE WORK AND/OR THE SYSTEM, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT AND/OR THE SYSTEM OF METHODS, PROCESSES, SOFTWARE, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO TXDOT OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS AGREEMENT PROVIDED THAT IF INFRINGEMENT CAN BE AVOIDED BY MODIFICATION TO THE ALLEGEDLY INFRINGING ARTICLE, TXDOT AGREES TO ALLOW SUCH MODIFICATION, AT DEVELOPER'S SOLE COST AND EXPENSE, UNLESS THE FORM, FIT OR FUNCTION OF THE ALLEGEDLY INFRINGING ARTICLE OR THE SYSTEM IS, IN TXDOT'S SOLE DETERMINATION, ADVERSELY AFFECTED; AND FURTHER PROVIDED THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM (i) TXDOT'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO TXDOT BY DEVELOPER; (ii) COMPLIANCE WITH WRITTEN SPECIFICATIONS PRESCRIBED BY TXDOT WITH RESPECT TO WHICH (1) DEVELOPER HAS COMPLIED IN FULL; (2) THE REASON FOR THE INFRINGEMENT SOLELY ARISES OUT OF TXDOT'S SPECIFICATIONS; AND (3) DEVELOPER HAS



NOTIFIED TXDOT IN WRITING IN ADVANCE OF POTENTIAL INFRINGEMENT AND TXDOT HAS DIRECTED DEVELOPER TO PROCEED AND DISREGARD THE POTENTIAL INFRINGEMENT, OR (iii) MODIFICATIONS TO THE DELIVERABLES NOT MADE BY A DEVELOPER-RELATED ENTITY; AND/OR

(d) THE ACTUAL OR ALLEGED ACT, ERROR, OMISSION OR MISCONDUCT OF ANY DEVELOPER-RELATED ENTITY IN OR ASSOCIATED WITH PERFORMANCE OF THE WORK; AND/OR

(e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF ANY DEVELOPER-RELATED ENTITY WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY ANY DEVELOPER-RELATED ENTITY; AND/OR

(f) ANY AND ALL STOP NOTICES AND/OR LIENS FILED IN CONNECTION WITH THE WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, PROVIDED THAT TXDOT IS NOT IN DEFAULT IN PAYMENTS OWING TO DEVELOPER WITH RESPECT TO SUCH WORK; AND/OR

(g) ANY SPILL OR RELEASE OR THREATENED SPILL OR RELEASE OF A HAZARDOUS MATERIAL (I) WHICH WAS BROUGHT ONTO ANY PROJECT SITE BY ANY DEVELOPER-RELATED ENTITY, OR (II) ATTRIBUTABLE TO THE ACTS, OMISSIONS, NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF CONTRACT OR GOVERNMENTAL RULES BY ANY DEVELOPER-RELATED ENTITY; AND/OR

(h) THE CLAIM OR ASSERTION BY ANY CONTRACTOR OF INCONVENIENCE, DISRUPTION, DELAY OR LOSS CAUSED BY INTERFERENCE BY ANY DEVELOPER-RELATED ENTITY WITH OR HINDERING THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY OTHER CONTRACTORS OR DEVELOPERS AS DESCRIBED IN SECTION 23.1, OR FAILURE OF ANY DEVELOPER-RELATED ENTITY TO COOPERATE REASONABLY WITH OTHER CONTRACTORS AND DEVELOPERS IN ACCORDANCE THEREWITH; AND/OR

(i) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF (i) THE FAILURE OF ANY DEVELOPER-RELATED ENTITY TO COMPLY WITH REQUIREMENTS OF THE CONTRACT DOCUMENTS OR GOVERNMENTAL APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE INTENTIONAL MISCONDUCT OR NEGLIGENCE OF ANY DEVELOPER-RELATED ENTITY, OR (iii) THE ACTUAL PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER'S PROPERTY BY ANY DEVELOPER-RELATED ENTITY.

**18.1.2** SUBJECT TO SECTIONS 13.8 AND 18.1.3, DEVELOPER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, LIABILITIES AND RESPONSE COSTS, INCLUDING ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO OR LOSS OF PROPERTY, AND INCLUDING PENALTIES, FINES, ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS, ARISING OUT OF, RELATING TO OR RESULTING FROM ERRORS, OMISSIONS, INCONSISTENCIES OR OTHER DEFECTS IN THE PROJECT AND/OR SYSTEM DESIGN, INSTALLATION, INTEGRATION OR CONSTRUCTION, REGARDLESS OF WHETHER SUCH ERRORS, OMISSIONS, INCONSISTENCIES OR DEFECTS WERE ALSO INCLUDED IN ANY OWNER DESIGN DOCUMENTS OR REFERENCE DOCUMENTS.

**18.1.3** Subject to the releases and disclaimers herein, Developer's indemnity obligation shall not extend to any Loss, damage or cost to the extent that such loss, damage or cost was caused by:

(a) the negligence, reckless or willful misconduct, bad faith or fraud of such Indemnified Party, or

(b) TxDOT's material breach of any of its obligations under the Contract Documents.

**18.1.4** In claims by an employee of Developer, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

**18.1.5** Developer hereby acknowledges and agrees that it is Developer's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Developer's performance of such obligation. Developer further agrees that any certificate, review and/or approval by TxDOT and/or others hereunder shall not relieve Developer of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 18.

## **18.2 Indemnification by TxDOT**

It is recognized that TxDOT may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Materials which may currently be present on the Project Site. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Hazardous Materials under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that Developer be exposed to any

such liability arising out of (a) proper Hazardous Materials Management activities in connection with pre-existing Project Site contamination, whether known or unknown (except as otherwise provided in Section 18.1.1(g)), and/or (b) the activities of any Persons other than any Developer-Related Entity. Accordingly, TxDOT shall, to the extent permitted by applicable law, indemnify, defend and hold Developer harmless from, any and all Third Party Claims, damages, losses, liabilities and costs, including penalties, fines, attorneys', accountants' and expert witness fees and costs, arising out of, or in connection with, bodily injury (including death) to persons, damage to property, or environmental removal or response costs arising out of the items expressly described in clauses (a) and (b) above, but specifically excluding those conditions for which Developer has agreed to be responsible as described in Section 18.1.1(g).

### **18.3 No Effect on Other Rights**

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of a party indemnified hereunder.

### **18.4 CERCLA Agreement**

The indemnities set forth in Sections 18.1.1(g) and 18.2 are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), and Health and Safety Code section 25364, to insure, protect, hold harmless and indemnify the Indemnified Parties.

### **18.5 Intent of Indemnity for Breach of Agreement**

The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(a) and (g) is intended to provide protection to TxDOT with respect to Third Party Claims associated with such breach. It is not intended to provide TxDOT with an alternative cause of action for damages incurred directly by TxDOT with respect to such breach.

### **18.6 No Relief from Responsibility**

No rights of TxDOT described in Section 18.1.1 above, no exercise or failure to exercise such rights, and no certificates or statements by TxDOT regarding completion or acceptance, shall:

- (a) relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;

- (b) relieve Developer of any of its obligations or liabilities under the Contract Documents;

- (c) be deemed or construed to waive any of TxDOT's rights and remedies under the Contract Documents, applicable law or in equity; or

(d) be deemed or construed as any kind of representation or warranty, express or implied, by TxDOT.

#### **18.7 Right to Rely**

Notwithstanding the provisions of Section 18.6, (a) Developer shall be entitled to rely on specific written Deviations TxDOT gives under this Agreement, (b) TxDOT is not relieved from any liability arising out of a material misrepresentation under any written statement TxDOT knowingly and intentionally delivers, and (c) TxDOT is not relieved from its obligations under the Contract Documents.

## **SECTION 19. PARTNERING AND DISPUTE RESOLUTION**

### **19.1 General Dispute Resolution Provisions**

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

### **19.2 Partnering**

#### **19.2.1 Schedule; Participation**

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

#### **19.2.2 Confidentiality**

Subject to the requirements of the Public Information Act, neither the language of this Section 19.2.2 nor any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

### **19.3 Disputes Governed by this Section; Demands and Disputes; Priorities**

If partnering fails to resolve an issue and Developer elects to pursue a formal Dispute with TxDOT, the Dispute shall be resolved pursuant to Texas Transportation Code Section 201.112 and the dispute resolution procedures established thereunder, as the same may be amended from time to time. The dispute resolution procedures are set forth in Exhibit M attached to this Agreement. Section 19 shall not apply to (i) claims that are not actionable against TxDOT by Developer on its own behalf or on behalf of any of its Subcontractors in accordance with Section 19.4, (ii) claims arising solely in tort; (iii) claims for indemnity under Section 18; (iv) claims for injunctive relief; (v) claims against insurance companies, including any Subcontractor Dispute that is covered by insurance; (vi) any Dispute based on remedies expressly created by statute; (vii) any Dispute that is actionable only against a bonding company; or (viii) any Dispute that is actionable only against a letter of credit bank.

### **19.4 Dispute Resolution: Additional Requirements for Subcontractor Disputes**

For purposes of this Section 19, a "Subcontractor Dispute" shall include any Dispute by a Subcontractor, including any pass-through claims by a lower tier Subcontractor, against

Developer that is actionable by Developer against TxDOT and arises from Work, materials or other services provided or to be provided under the Contract Documents. If Developer determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply:

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

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

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

## **19.5 Mediation or Other Alternative Dispute Resolution**

Developer and TxDOT, by mutual agreement, may at any time refer the Dispute to mediation or any other form of alternative dispute resolution that is acceptable to all parties to the Dispute. At the request of TxDOT, Developer shall also participate in any and all mediation or other alternative dispute resolution proceedings between TxDOT and any Utility Owner relating to any Utility Adjustment (to the extent not resolved under the dispute resolution process set forth in this Section 19). Developer and TxDOT shall share equally the expenses of the mediator or other alternative dispute resolution process.

## **19.6 Subsequent Proceedings**

### **19.6.1 Exclusive Jurisdiction and Venue**

Developer agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Contract Documents or the Project, shall be the Travis County District Court. Developer waives all objections it might have to the jurisdiction or venue of such court and hereby consents to such court's

jurisdiction, regardless of Developer's residence or domicile, for any such action or proceeding.

#### **19.6.2 Admissibility of Disputes Resolution Proceedings**

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

#### **19.7 Continuation of Work**

At all times during this dispute resolution process or any subsequent administrative, arbitration or court proceeding, Developer and all Subcontractors shall proceed with the Project diligently, without delay, in accordance with this Agreement, and as directed by TxDOT. Developer acknowledges that it shall be solely responsible for any Project delay that results from its actions or inactions during the dispute resolution process, even if Developer's position in connection with the Dispute ultimately prevails. In addition, all Parties shall continue to comply with all provisions of the Contract Documents, the Governmental Approvals and applicable Law.

#### **19.8 Records Related to Dispute**

Throughout the course of any Work that is the subject of any Demand or Dispute, Developer shall keep separate and complete records as required by Section 13.3.4. These records shall be retained for a period of not less than five years from the date of resolution of the Dispute.

## **SECTION 20. COMPLETION AND ACCEPTANCE**

### **20.1 System Acceptance**

#### **20.1.1 General Requirements**

In general, System Acceptance with respect to a Pilot System or any Project Segment can be achieved only when (i) all required System Acceptance testing is successfully completed, (ii) the Work associated with such Pilot System or Project Segment is completed, (iii) the Project Site of such Pilot System or Project Segment safely may be opened to public and private vehicular traffic, and (iv) such Pilot System and/or Project Segment functions accurately and reliably in accordance with the Performance Requirements.

#### **20.1.2 Notice and Inspection**

Developer shall provide written notice to TxDOT when all of the following have occurred:

(a) Developer has completed all Work relating to the applicable Pilot System or Project Segment except for Punch List items, final cleanup and other items included in the requirements for Final Acceptance of such Pilot System or Project Segment;

(b) Developer has ensured that all such Work relating to the applicable Pilot System or Project Segment has been performed in accordance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law;

(c) The applicable Pilot System or Project Segment may be operated without damage to the System or Project Segment or any other property on or off the applicable Project Site, and without injury to any Person;

(d) The Pilot System or Project Segment, (i) can be safely opened to public use, (ii) is fully signed and striped, and (iii) has all safety appurtenances installed;

(e) All remaining Punch List work for the applicable Pilot System or Project Segment can be completed with no impact to traffic. If any lane closures are required to complete the Punch List items, Developer shall be only entitled to close lanes between 8:00 p.m. and 6:00 a.m. and through traffic will be maintained by Developer at all times;

(f) Developer has furnished to TxDOT (i) the necessary preliminary as-built drawings associated with completed Work, (ii) the as-built drawings and documents required for conducting inspections and/or testing, and (iii) the applicable as-built drawings and documents for maintenance and operations;



(g) Developer has furnished to TxDOT a certification from Developer's Construction Quality Acceptance Manager, in form and substance satisfactory to TxDOT, certifying conformity of the construction with the Engineering Design Documents;

(h) Developer has acquired all spare parts, components and equipment as described in TP Section 4.5.6; and

(i) Developer has completed all inspection, testing and verification as described in TP Section 4.4, including any additional inspection and testing following any repairs, modifications and/or replacements required thereunder and has provided TxDOT with all documentation and other items required by TP Sections 2, 7 and 8.

TxDOT will then conduct such inspections, verifications, surveys and/or testing as it deems desirable. If such inspections, verifications, surveys and/or tests disclose that any of Work does not meet the requirements of the Contract Documents, TxDOT will promptly advise Developer as to any Errors in the Work necessary to be corrected as a condition to System Acceptance and as to any Errors which may be corrected as Punch List items. Upon correction of the Errors identified as a prerequisite to System Acceptance, Developer shall provide written notification to TxDOT, and TxDOT will conduct additional inspections, verifications, surveys and/or testing as it deems desirable. This procedure shall be repeated until TxDOT finds that all prerequisites to System Acceptance of the applicable Pilot System or Project Segment have been met.

### **20.1.3 Certificate of System Acceptance**

TxDOT will issue a Certificate of System Acceptance with respect to the applicable Pilot System and Project Segment at such time as (a) TxDOT finds that all conditions set forth in Section 20.1.2 have been satisfied; (b) TxDOT finds that all Errors identified as prerequisites to System Acceptance have been corrected, (c) all inspection and testing as described in TP Section 4.4 shall have been completed, (d) Developer and TxDOT have agreed upon a Punch List; and (e) any other conditions precedent to System Acceptance expressly set forth in this Agreement have occurred.

## **20.2 Punch List Acceptance**

### **20.2.1 Requirements**

Developer shall provide written notice to TxDOT when all of the items of Work listed on the Punch List have been completed.

### **20.2.2 Certificate of Punch List Acceptance**

TxDOT will issue a Certificate of Punch List Acceptance with respect to the applicable Pilot System and Project Segment at such time as (a) Developer has delivered to TxDOT the written notice described in Section 20.2.1; (b) all inspection and testing of Punch List Work as described in TP Section 4.4 shall have been completed, and

(c) TxDOT finds that all Errors identified as prerequisites to Punch List Acceptance have been corrected.

## 20.3 Final Acceptance

**20.3.1** Promptly after System Acceptance with respect to a Pilot System or Project Segment, Developer shall perform all of the Work relating to such Pilot System or Project Segment, if any, which was deferred in connection with the System Acceptance, and shall satisfy all of its other obligations under the Contract Documents, the Governmental Approvals and applicable Laws, including ensuring that all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested. TxDOT will issue a Certificate of Final Acceptance when it finds that all of the following conditions be been satisfied:

(a) TxDOT has issued a Certificate of System Acceptance and a Certificate of Punch List Acceptance with respect to the applicable Pilot System or Project Segment;

(b) TxDOT has received all Design Documents, As-Built Document, Final ROW record maps, surveys, maintenance manuals, electronic files, test data and other deliverables required under the Contract Documents and a Source Code Escrow has been established for any Software Source Code that is required to be deposited into a Source Code Escrow pursuant to Section 21.8.4;

(c) All special tools, equipment, furnishings, Hardware, Software and supplies purchased and/or used by Developer as provided in the Contract Documents (provided, however, that prior to expiration of this Agreement, Developer may retain possession of any such items that may be used in connection with a future Project Segment Supplement) shall have been delivered to TxDOT free and clear of Liens;

(d) All personnel, construction supplies, equipment, waste materials, rubbish and temporary facilities of each Developer-Related Entity shall have been removed from the applicable Project Site, Developer shall restore and repair all damage or injury arising from such removal to the satisfaction of TxDOT, and such Project Site shall be in good working order and condition;

(e) Developer shall have delivered to TxDOT a certification representing that there are no outstanding claims of Developer or claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or railroads with respect to the Work, other than any previously submitted unresolved claims of Developer and any claims, Liens or stop notices of a Subcontractor, laborer, Utility Owner or railroad being contested by Developer (in which event the certification shall include a list of all such matters with such detail as is requested by TxDOT and, with respect to all Subcontractor, laborer, Utility Owner and railroad claims, Liens and stop notices, shall include a representation by Developer that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same).

For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;

(f) Developer shall have satisfactory completed all additional inspection and testing following any repairs, modifications and/or replacements required thereunder;

(g) The Punch List items shall have been completed to the satisfaction of TxDOT, all of Developer's other obligations under the Contract Documents, the Governmental Approvals and applicable Laws, other than obligations which by their nature are required to be performed after such Final Acceptance, shall have been satisfied in full or waived in writing by TxDOT;

(h) Developer shall have completed the items set forth as conditions to Final Acceptance in the TP, including Sections 1.2.5, 2.2.5, 2.2.8, 2.2.12, 2.6.2, 4.4.11, 7.1, 8.1.3, 8.5, and 8.13. ; and

(i) Developer shall have finalized and closed out all Governmental Approvals.

**20.3.2** Final Acceptance for a Pilot System or Project Segment will not prevent TxDOT from correcting any measurement, estimate, or certificate made before or after completion of the Work for such Pilot System or Project Segment, nor shall it prevent TxDOT from recovering from Developer, its Surety(ies), Letter of Credit Banks, or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Developer to fulfill the obligations under the Contract Documents. A waiver on the part of TxDOT of any breach of any part of Developer shall not be held to be a waiver of any other or subsequent breach. The occurrence of any Final Acceptance shall not relieve Developer of any of its continuing obligations under the Contract Documents, including Warranty and maintenance obligations, or constitute any assumption of liability by TxDOT.

## **20.4 End of Maintenance Term Acceptance**

### **20.4.1 Requirements**

In connection with the expiration of the Maintenance Term (as extended by any Maintenance Options) for each Pilot System and Project Segment, Developer shall provide written notice to TxDOT when all of the following have occurred:

(a) Developer has supplied and TxDOT has accepted revised As-Built Documents reflecting any and all changes and modifications that may have occurred during the Maintenance Term;

(b) Developer has supplied and TxDOT has approved and accepted the complement of spare parts and tools required to properly maintain the System;

(c) Developer has supplied and TxDOT has approved and accepted maintenance manuals revised as necessary to reflect any and all changes and modifications that may have been made to the System since the manuals were originally provided. The sets of manuals shall be provided in the following quantities: one copy for each Tolling Zone that is part of the Project Segment in question, plus 5 copies for TxDOT headquarters;

(d) Developer has supplied and TxDOT has approved and accepted completed Maintenance Records and Maintenance Reports;

(e) All punch list items relating to the end of the Maintenance Term have been corrected by Developer and approved and accepted by TxDOT;

(f) A System Performance Audit has been successfully completed to TxDOT's satisfaction;

(g) If not already located on TxDOT's property and if requested by TxDOT, Developer has delivered and installed, and TxDOT has approved and accepted, all MOMS Software and Hardware at a location designated by TxDOT; and

(h) Developer has trained TxDOT's designated maintenance staff to TxDOT's satisfaction.

#### **20.4.2 Certificate of End of Maintenance Term Acceptance**

TxDOT will issue a Certificate of End of Maintenance Term Acceptance with respect to the applicable Pilot System and Project Segment at such time as (a) TxDOT finds that all conditions set forth in Section 20.2.1 have been satisfied; (b) TxDOT finds that all Errors identified as prerequisites to End of Maintenance Term Acceptance have been corrected, (c) all inspection and testing as described in TP Section 4.5.11 shall have been completed, and (d) any other conditions precedent to End of Maintenance Term expressly set forth in this Agreement have occurred.

#### **20.5 Assignment of Causes of Action**

Developer shall assign to TxDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services, equipment, Hardware, Software or materials pursuant to the Contract Documents or any Subcontract. This assignment shall be made and become effective with respect to each Pilot System and Project Segment at the time TxDOT tenders the applicable Final Payment of the Price to Developer, without further acknowledgment by the Parties.

## **SECTION 21. DOCUMENTS AND RECORDS, INSPECTION AND TESTING**

### **21.1 Escrowed Proposal Documents**

Prior to execution of this Agreement, Developer delivered into escrow one copy of all unit pricing, price quote and other documentary information used in preparation of any Price submitted with the Proposal (the "EPDs"). Upon execution of this Agreement, the EPDs shall be transferred from escrow and held in locked fireproof cabinet(s) supplied by Developer and located in TxDOT's project office with the key held only by Developer. Concurrently with the issuance of each NTP other than Pilot System NTP 1 and with the approval of each Project Segment Supplement, Change Order or amendment to any Contract Document, one copy of all unit pricing, price quote and other documentary information used in preparation of the Project Segment Supplement, Change Order or amendment shall be added to the cabinet to be held with the other EPDs. The EPDs will be held in such cabinet or otherwise maintained until all of the following have occurred: (a) 180 Days have elapsed from the later of expiration of the last Maintenance Term (as extended by any Maintenance Option exercised by TxDOT) or termination of this Agreement, as applicable; (b) all disputes regarding the Work have been settled; and (c) Final Payment of the Maintenance Price has been made and accepted with respect to each Pilot System and Project Segment.

#### **21.1.1 Availability for Review**

The EPDs shall be available during business hours for joint review by Developer, TxDOT and any dispute resolver in accordance with Section 19, in connection with approval of any Project Segment Supplements, Project Schedule(s), negotiation of Change Orders and resolution of Disputes under the Contract Documents, and also as described in Section 21.1.6. TxDOT shall be entitled to review all or any part of the EPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

#### **21.1.2 Proprietary Information**

The EPDs are, and shall always remain, the property of Developer and shall be considered to be in Developer's possession, subject to TxDOT's right to review the EPDs as provided in this Section 21.1. Developer will have and control the keys to the filing cabinet containing the EPDs. TxDOT acknowledges that Developer may consider that the EPDs constitute trade secrets or proprietary information.

#### **21.1.3 Representation**

Developer represents and warrants that the EPDs constitute (or in the case of Project Segments, will constitute) all documentary information used in the preparation of the applicable Price. Developer agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. Developer further agrees

that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

#### **21.1.4 Contents of EPDs**

The EPDs shall, inter alia, clearly detail how each price included in the Proposal (and, in the case of Project Segments, included in the Project Segment Supplement) has been determined and shall show prices and price elements in sufficient detail as is adequate to enable TxDOT to understand how Developer calculated the applicable Price. The EPDs provided in connection with quotations, amendments and Change Orders shall, inter alia, clearly detail how the total price and individual components of that price were determined. The EPDs shall itemize the estimated costs of performing the required work separated into usual and customary items and cost categories and sub-items and cost categories to present a detailed estimate of costs, such as direct labor; repair labor; ~~equipment ownership and operation, maintenance, refurbishment/repair/replacement;~~ Hardware; Software; Expendable Materials, supplies and spares; permanent materials; Subcontract costs; plant and equipment; indirect costs; contingencies; mark-up; overhead and profit. The EPDs shall itemize the estimated annual costs of insurance premiums, bonds and letters of credit for each coverage required to be provided by Developer under Section 9. The EPDs shall include all assumptions, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by Developer to arrive at the applicable Price, Project Segment Supplement price, amendment price or Change Order price.

#### **21.1.5 Form of EPDs**

Except as otherwise provided in the RFDP, Developer shall submit the EPDs in such format as is used by Developer in connection with its Proposal and in the calculation of each Price other than that which is covered by Pilot System NTP 1. Developer represents and warrants that all EPDs provided were or will be personally examined by an authorized officer of Developer prior to delivery, and that the EPDs meet the requirements of Section 21.1.4. Developer further represents and warrants that the EPDs provided in connection with quotations, amendments, Project Segment Supplements and Change Orders will be personally examined prior to delivery by an authorized officer of Developer, and that they shall meet the requirements of Section 21.1.4.

#### **21.1.6 Review by TxDOT**

TxDOT may at any time conduct a review of the EPDs to determine whether they are complete. If TxDOT determines that any data is missing from an EPD, Developer shall provide such data within three business days after delivery of TxDOT's request for such data. At that time of its submission to TxDOT, such data will be date stamped, labeled to identify it as supplementary EPD information and added to the EPD. Developer shall have no right to add documents to the EPDs except upon TxDOT's request. The EPDs associated with any Pilot System or Project Segment or with any Project Segment Supplement, Change Order or amendment to this Agreement shall be reviewed, organized and indexed in the same manner described in Section 6 of the Instructions to Proposers.

## **21.2 Subcontract Pricing Documents**

For each Pilot System and Project Segment, Developer shall require the principal design Subcontractor and each Major Subcontractor to submit to Developer a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract Work included in any Project Segment Supplement, amendment and/or Change Order), immediately prior to executing the Subcontract and each change order and Subcontract amendment, to be held in the same manner as the EPDs and which shall be accessible by Developer and its successors and assigns (including TxDOT) and dispute resolvers, on terms substantially similar to those contained herein. Each such Subcontract shall include a representation and warranty from the Subcontractor, for the benefit of Developer and TxDOT, stating that its EPDs constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Developer and TxDOT together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Developer and/or TxDOT in connection with any claim made by such Subcontractor.

## **21.3 Reporting Requirements**

**21.3.1** Developer shall deliver to TxDOT financial and narrative reports, statements, certifications, budgets and information as and when required under this Agreement.

**21.3.2** Developer shall furnish, or cause to be furnished, to TxDOT such information and statements as TxDOT may reasonably request from time to time for any purpose related to the Project, this Agreement or the other Contract Documents. In addition, Developer shall deliver to TxDOT the following financial statements for each Guarantor, at the times specified below:

**21.3.2.1** Within 60 Days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current Fiscal Year to the end of such quarter, setting forth in comparative form the figures for the corresponding periods during the previous Fiscal Year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Guarantor;

**21.3.2.2** Within 120 Days after the end of each Fiscal Year, duplicate copies of the balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor,

which opinion shall state that such financial statements have been prepared in accordance with Generally Accepted Accounting Principles consistently applied (except for changes in application in which such accountants concur), and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; and

**21.3.2.3** Upon request of TxDOT for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to TxDOT as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as the case may be.

**21.3.3** Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by TxDOT in connection with any Project financing. Without limiting the generality of the foregoing, Developer shall provide such information deemed necessary or desirable by TxDOT for inclusion in TxDOT's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Developer shall provide customary representations and warranties to TxDOT and the capital markets as to the correctness, completeness and accuracy of any information furnished.

**21.3.4** Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by TxDOT to assist or facilitate the submission by TxDOT of any documentation, reports or analysis required by the State, UST, FHWA and/or any other Governmental Entity with jurisdiction over the Project.

**21.3.5** All reports and information delivered by Developer under Sections 21.3.3 and 21.3.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

## **21.4 Maintenance of, Access to and Audit of Records**

**21.4.1** Developer shall maintain at a Project administration office in Austin, Texas a complete set of all books and records prepared or employed by Developer in its management, scheduling, cost accounting and other activities related to the Work and the Project. Developer shall grant to TxDOT such audit rights and shall allow TxDOT such access to and the right to copy such books and records as TxDOT may request in connection with the issuance of any NTP or with respect to any Change Orders, the resolution of Disputes, and such other matters as TxDOT reasonably deems necessary for purposes of verifying compliance with this Agreement and applicable law.



**21.4.2** Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Developer has been overpaid under a previous progress report or progress payment, the excess payment will be credited against current progress reports or payments.

**21.4.3** For cost and pricing data submitted in connection with Pilot Systems or Project Segments other than that which is covered by Pilot System NTP - 1 or with any Change Orders, TxDOT and its representatives shall have the right to examine all books, records, documents and other data of Developer related to the negotiation of or performance of such Work for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted; provided, however, that the foregoing shall ~~not apply to pricing based on adequate price competition, established catalog or market~~ prices of commercial items sold in substantial quantities to the public or prices set by law or regulation, in each case, as determined by TxDOT. Such right of examination shall extend to all documents deemed necessary by TxDOT and its representative to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

**21.4.4** All claims filed against TxDOT shall be subject to audit at any time following the filing of the claim. The audit may be performed by employees of TxDOT or by an auditor under contract with TxDOT. No notice is required before commencing any audit before 60 Days after the later of (i) the expiration of the Maintenance Term (including any Maintenance Option Periods), or (ii) the termination of this Agreement. Thereafter, TxDOT shall provide 10 Days notice to Developer, any Subcontractors or their respective agents before commencing an audit. Developer, Subcontractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Developer, Subcontractors or their agents shall cooperate with the auditors. Failure of Developer, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of Developer, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

**21.4.5** At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Union agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;

6. Payroll tax forms;
7. Material invoices and requisitions;
8. Material cost distribution work sheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Subcontractors' (including Suppliers) invoices;
11. Subcontractors' and agents' payment certificates;
12. Canceled checks (payroll and Suppliers);
13. Job cost report;
14. Job payroll ledger;
15. General ledger;
16. Cash disbursements journal;
17. All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim; and
18. Work sheets used to prepare the claim establishing the cost components for items of the claim including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

**21.4.6** Full compliance by Developer with the provisions of this Section 21.4 is a contractual condition precedent to Developer's right to seek relief under Section 19.

**21.4.7** Developer represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 21.4.

## **21.5 Retention of Records**

Developer shall maintain all records and documents relating to the Work, including copies of all original documents delivered to TxDOT, and the Project in Austin, Texas until five years after the later of (i) the expiration of the Maintenance Term, or (ii) the termination of this Agreement. Developer shall notify TxDOT where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Developer's costs under the Contract Documents. Developer shall make these records

and documents available for audit and inspection to TxDOT, at Developer's offices in Austin, Texas, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents, at no expense to Developer. If approved by TxDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

## **21.6 Public Information Act**

**21.6.1** Developer acknowledges and agrees that, except as provided by Section 361.3023 of the Texas Transportation Code, all records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Developer, are subject to the provisions of the Public Information Act. If Developer believes information or materials submitted to TxDOT constitute trade secret, proprietary information or other information excepted from disclosure, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this provision shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable law, and the provisions of the Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law. Developer is advised to contact legal counsel concerning such law and its application to Developer.

**21.6.2** If TxDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," TxDOT will use reasonable efforts to notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Information Act or other applicable law within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. Under no circumstances, however, will TxDOT be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, or court order, or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultant.

**21.6.3** In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to TxDOT, TxDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees, including attorneys' fees and costs, incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Developer. Nothing in this Agreement is intended to prejudice the rights of Developer to protect from

disclosure information of Developer that, under applicable law, is entitled to protection from disclosure.

## **21.7 Ownership and Use of Documents**

As between TxDOT and Developer, except as set forth in Section 21.8, all services and products provided under this Agreement, including all copyright interests and any other intellectual property, in and to the Software (including both object code and Software Source Code) and any other systems, data, sketches, charts, calculations, plans, specifications, deliverables, electronic files, correspondence and other documents created or collected under the terms of the Contract Documents produced or provided by Developer, alone or in combination with TxDOT and/or its employees, under this Agreement and Inventions as defined in Section 21.9.1 ("Developed Intellectual Property") shall be the property of TxDOT, and that TxDOT hereby grants Developer a worldwide, ~~nonexclusive, royalty-free~~ license to the Developed Intellectual Property. Developer agrees that, except as otherwise provided in Section 21.8 hereof, any contribution by Developer or its employees to the creation of such works, including all copyright interest therein, shall be considered works made for hire by Developer for TxDOT and that such works shall, upon their creation, be owned exclusively by TxDOT. To the extent that any such works may not be considered works made for hire for TxDOT under applicable law, Developer agrees to assign and, upon their creation, automatically assigns to TxDOT the ownership of such works, including copyright interests and any other intellectual property therein, without the necessity of any further consideration. Engineering Design Documents and System Design Documents (excluding the Software Source Code) shall become TxDOT's property upon preparation; Construction Documents shall become TxDOT's property upon delivery to TxDOT; and other documents prepared or obtained by Developer in connection with the performance of its obligations under the Contract Documents, including studies, manuals, as-built drawings, technical and other reports and the like, shall become the property of TxDOT upon Developer's preparation or receipt thereof. Subject to any requirements in the Contract Documents for Developer's delivery of specific documents, not less frequently than monthly, Developer shall provide TxDOT with a detailed written list of all Design Documents and Construction Documents prepared or received by Developer, and Developer shall furnish TxDOT with copies of any such Design Documents and Construction Documents immediately upon TxDOT's written request. Developer shall maintain all other documents described in this Section 21.7 in accordance with the requirements of Section 21.5 and shall deliver copies to TxDOT as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to TxDOT as a condition to Final Acceptance.

## **21.8 Intellectual Property Rights; Licensing**

### **21.8.1 Preexisting Works by Developer**

Notwithstanding anything to the contrary in Section 21.7 above, Developer may include in the Software, the System design and technology and in any other System idea, concept and deliverable, pre-existing work or materials only if either they are provided by TxDOT or if they are owned or licensable by Developer. To the extent that pre-existing

work or materials owned or licensed by Developer are included in the Software, the System design and technology and/or any other System idea, concept or deliverable, Developer shall identify any such work or materials prior to commencement of the Work involving such work or materials. Developer grants to TxDOT (as an exception to the transfer and assignment provided in Section 21.7) and, where the System is being provided to an RMA or an Other TxDOT Developer pursuant to the terms of this Agreement (including pursuant to a Project Segment Supplement or otherwise), such RMA and Other TxDOT Developer, an irrevocable, permanent, nonexclusive, world-wide royalty-free right and license to use, execute, reproduce, display, perform, and distribute internally copies of, and prepare derivative works based upon, the Software, the System design and technology and/or any other System idea, concept or deliverable, and the right to authorize third parties to do any of the foregoing, subject to the execution of a commercially reasonable non-disclosure agreement by such third party and further subject to the terms of this Agreement and any separate and specific licensing agreement entered into between TxDOT and the Developer. The foregoing licenses and rights shall be used solely as needed (i) to operate, maintain and support the System and the Project and at any toll road or similar or related facilities in which such Software, System design and technology and any other System idea, concept and deliverables are used under or pursuant to this Agreement (whether by TxDOT, an RMA or an Other TxDOT Developer), including at the toll roads and in the toll traffic lanes that utilize such System and at the Project Sites specified in this Agreement or pursuant to any Project Segment Supplements issued incident to the acquisition of the System by TxDOT, an RMA or an Other TxDOT Developer, and (ii) in the event of an Event of Default or the failure, unwillingness or inability of Developer to perform its obligations under the Contract Documents; and (iii) in the event of an Event of Default or the failure, unwillingness or inability of Developer to perform its obligations under the Contract Documents, at any other toll roads, toll traffic lanes or similar or related facilities owned, operated or managed by TxDOT, an RMA or an Other TxDOT Developer. The foregoing rights and licenses shall survive the expiration or termination of this Agreement.

### **21.8.2 Residuals**

It is mutually acknowledged that, during the normal course of its dealings with TxDOT and the Work under this Agreement, Developer and its personnel and agents may become acquainted with ideas, concepts, know-how, methods, techniques, processes, skills, and adaptations pertaining to the Software, Project, System design and technology and any other System idea, concept and deliverable, including those which TxDOT considers to be proprietary or secret. Notwithstanding anything in this Agreement to the contrary, and regardless of any termination of this Agreement, Developer shall be entitled to use, disclose, and otherwise employ any ideas, concepts, know-how, methods, techniques, processes, and skills, and adaptations, including generalized features of the sequence, structure and organization of any works of authorship, in conducting its business (including providing Work or creating programming or materials for other customers), and TxDOT shall not assert against Developer or its personnel any prohibition or restraint from so doing.

### 21.8.3 Third Party Interests

TxDOT's interest in and obligations with respect to any (i) Software, (ii) System design and technology, (iii) System ideas, concepts and deliverables, (iv) documentation, or (v) data to be obtained from third-party vendors, whether or not obtained with the assistance of Developer, shall be determined in accordance with the agreements and policies of such vendors; provided, however, that (x) Developer shall be solely responsible for all costs associated with the items described in clauses (i)-(v) hereof; and (y) in no event shall Developer change the terms of such agreements without TxDOT's written approval.

### 21.8.4 Source Code Escrow

(a) TxDOT and Developer acknowledge that Developer and/or ~~Developer's Software suppliers~~ may not wish to disclose directly to TxDOT the Software Source Code which is pre-existing works (not for Software owned by TxDOT pursuant to Section 21.7), as public disclosure could deprive Developer and/or Developer's Software suppliers of commercial value, but that TxDOT must be ensured access to such Software Source Code in certain circumstances to permit it to realize the benefits contemplated by this Agreement. Therefore, as a condition to payment of certain Draw Requests, Maintenance Payment Draw Requests, and System Acceptance for a Pilot System or Project Segment, Developer shall place all the Software Source Code owned by Developer, licensed to or by Developer or with respect to which Developer has a right to use in connection with the System or this Project in an escrow (the "Source Code Escrow") with a mutually acceptable escrow company ("Code Escrow Agent") engaged in the business of receiving and maintaining escrows of Software Source Code, related documentation, and other technology. With regard to Software and updates developed as part of the Maintenance Work, such disclosure and delivery to the Source Code Escrow shall occur at the earlier of (x) when required in connection with a Maintenance Payment Draw Request or (y) such time as the Software and updates are implemented. The terms of the Source Code Escrow shall be as set forth in Exhibit W, provided that TxDOT shall be assured access to the Software Source Code in the event any of the following events have occurred (i) a business failure (including cessation of business, bankruptcy, or insolvency) of the Developer and/or Software supplier; (ii) the Developer and/or Software supplier has failed to provide or is unable or unwilling to provide the services as necessary to permit continued use of the Software by TxDOT (or where applicable, an RMA or Other TxDOT Developer that has acquired the System pursuant to the terms of this Agreement) as contemplated by the Contract Documents; or (iii) in connection with a partial or complete termination of this Agreement as a result of a Developer Event of Default. Developer shall cause the Software supplier to keep the Software Source Code up-to-date by depositing all enhancements and modifications into the Source Code Escrow during the term of its existence as such enhancements and modifications are developed, completed or implemented.

(b) For purposes hereof, the "Software Source Code" means the software written in programming languages, such as C and Fortran, including all comments and

procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architectural standards, describing the data flows, data structures, and control logic of the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation.

## **21.9 Inventions**

### **21.9.1 Invention Defined.**

An "Invention" shall mean any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, made solely or jointly by Developer and/or Developer's employees, or jointly by Developer and/or Developer's employees with one or more employees of TxDOT, during the term of this Agreement and in the performance of any Work under any NTP issued hereunder, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in the performance of Work under an NTP issued hereunder.

### **21.9.2 Vesting of Rights.**

Developer hereby assigns to TxDOT, its successors and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefor and to claim all rights or priority thereunder, and the same shall become and remain TxDOT's property whether or not such protection is sought. Developer shall promptly make a complete written disclosure to TxDOT of each Invention not otherwise clearly disclosed to TxDOT in the pertinent Deliverables, specifically pointing out features or concepts that Developer believes to be new or different. Developer shall, upon TxDOT's request and at TxDOT's expense, cause patent applications to be filed thereon, through lawyers designated by TxDOT, and shall forthwith sign all such applications over to TxDOT, its successors, and assigns. Developer shall give TxDOT and its lawyers all reasonable assistance, at TxDOT's expense, in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as TxDOT may consider necessary or appropriate to carry out the intent of this Agreement.

## **21.10 Inspection and Testing**

**21.10.1** If the Contract Documents or any Law requires any portion of the Work to be inspected, tested or approved, Developer shall give TxDOT timely notice of its readiness so TxDOT may observe such inspection, testing or approval. Developer shall bear all costs of such inspections, tests or approvals unless otherwise provided.

**21.10.2** If TxDOT determines that any Work requires special inspection, testing or approval which Section 21.10.1 does not include, it will instruct Developer to order such special inspection, testing or approval and Developer shall give notice as in



Section 21.10.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, Developer shall bear all costs thereof, including compensation for TxDOT's additional services made necessary by such failure. If the Work complies, TxDOT shall bear such costs and an appropriate Change Order shall be issued.

**21.10.3** Developer shall permit all reasonable inspection and testing TxDOT may desire to conduct. Such inspection and testing shall not relieve Developer of any of its obligations under this Agreement.



## **SECTION 22. VALUE ENGINEERING**

### **22.1 General**

This Section 22 sets forth the requirements applicable to preparation, review and approval of Value Engineering recommendations ("VEs") for the purpose of enabling Developer and TxDOT to take advantage of potential cost savings or provide potential improvements to the Work through changes in the requirements relating to the Work. Developer is encouraged to submit VEs whenever it identifies potential savings or improvement ("Developer-Initiated VE") for the Project, including each Pilot System and/or Project Segment. TxDOT may also request Developer to develop and submit a specific VE ("TxDOT-Initiated VE"). Developer shall have the right to refuse to consider such TxDOT-Initiated VE, provided that nothing herein is intended to alter TxDOT's right to issue TxDOT-Directed Changes in accordance with Section 13.

### **22.2 Value Engineering Recommendation**

A VE is a proposal developed and documented by Developer which: (a) would modify or require a change in any of the requirements of or constraints set forth in the Contract Documents in order to be implemented; and (b) changes the applicable Price without impairing essential functions or characteristics of the Project, including service life, economy of operation, ease of maintenance, desirability and safety, as determined by TxDOT in its sole discretion, and provided that it is not based solely upon a change in quantities, performance, accuracy or reliability or a relaxation of the requirements contained in the Contract Documents.

### **22.3 Required Information**

At a minimum, the following information shall be submitted by Developer with each VE:

- (a) A statement that the submission is a VE, and a narrative description of the proposed change;
- (b) Description of the existing requirements in the Contract Documents which are involved in the proposed change;
- (c) Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
- (d) Itemization of the requirements of the Contract Documents which must be changed if the VE is approved;
- (e) A complete cost analysis including (i) Developer's cost estimate for performing the subject Work in accordance with the Contract Documents compared to Developer's cost estimate for performing the subject Work in accordance with the proposed changes, (ii) an estimate of additional costs that will be incurred by TxDOT,

including estimated impact on future maintenance costs; and (iii) costs of development and implementation of the VE by Developer. The cost of any additional Governmental Approvals, rights-of-way or easements and other costs or impacts to the Project, shall be included in the cost analysis;

(f) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents, including environmental compliance requirements;

(g) If available, a description of any previous use or tests of the VE and the conditions and results. If the VE was previously submitted on another TxDOT project, indicate the date, contract number and the action taken by TxDOT; and

(h) ~~Date or time by which a Change Order adopting the VE must be issued~~ in order to obtain the maximum cost reduction, noting any effect on the current Project Schedule and most recent approved Draw Request or Maintenance Payment Draw Request, as applicable.

Any additional information requested by TxDOT shall be provided in a timely manner. Additional information could include results of field investigations and surveys, design computations and field change sheets.

## **22.4 TxDOT Review and Approval**

**22.4.1** TxDOT will determine whether a VE qualifies for consideration and evaluation. VEs that require excessive time or costs for review, evaluation or investigations, or that are not consistent with TxDOT's design and maintenance policies and basic design criteria may be rejected without evaluation. Developer shall have no claim for any additional costs or delays resulting from the rejection of a Developer-Initiated VE, including VE development costs, loss of anticipated profits or increased material or labor costs. TxDOT will consider only proven features that have been employed under similar conditions or projects acceptable to TxDOT. Within ten business days after receipt of the VEs, TxDOT and Developer will meet and confer to determine whether to proceed with further evaluation. If requested by TxDOT, Developer shall conduct an analysis of each such concept and shall provide data to TxDOT within 15 business days after receipt of such request so as to enable TxDOT to determine whether to accept the VE.

**22.4.2** Upon receipt of a VE, TxDOT will process it, but shall not be liable for any delay in acting upon any VE submitted pursuant to this Section 22. Developer or TxDOT may withdraw all or part of any VE at any time prior to approval. In the event Developer withdraws a Developer Initiated VE, Developer shall be liable for costs incurred by TxDOT in reviewing the withdrawn VE. In the event TxDOT withdraws a TxDOT Initiated VE, TxDOT shall be liable for costs incurred by Developer in studying and preparing the withdrawn VE. Each Party shall bear its own costs in connection with preparation and review of rejected VEs.

**22.4.3** TxDOT may approve, in its sole discretion, in whole or in part, by Change Order, any VE submitted. Designs for approved VEs shall be prepared by Developer for incorporation into the Design Documents or Maintenance Procedures, as appropriate. Until a Change Order is issued on a VE, Developer shall remain obligated to perform in accordance with the Contract Documents. The decision of TxDOT as to rejection or approval of any VE shall be at the sole discretion of TxDOT and shall be final and not subject to partnering, dispute resolution or appeal.

## **22.5 Price Adjustment**

If TxDOT accepts a VE, the applicable Price shall be adjusted in accordance with the following:

**22.5.1** For Developer-Initiated VEs which reduce the Developer's costs, the applicable Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by TxDOT resulting from the VE plus (b) 50% of estimated net savings. For TxDOT-Initiated VEs which reduce the Developer's costs, the applicable Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by TxDOT resulting from the VE plus (b) 75% of estimated net savings. For VEs that result in a reduction of the Developer's costs, the term "estimated net savings" shall mean (x) the difference between the cost of performing the Work according to the Contract Documents and the actual cost to perform the Work, as modified by the VE, less (y) the actual costs of studying and preparing the VE as substantiated by Developer and approved by TxDOT in writing in accordance with the Change Order procedures set forth herein, less (z) any additional costs incurred by TxDOT resulting from the VE (including the costs incurred in reviewing the VE). Developer's profit shall not be considered part of the cost. For VEs that result in an increase in the Developer's costs, the applicable Price shall be increased by an amount equal to the sum of (a) 100% of any additional costs incurred by Developer and approved by TxDOT in accordance with the Change Order procedures in Section 13 resulting from the VE plus (b) 50% of estimated net savings. For VEs that result in an increase of the Developer's costs, the term "estimated net savings" shall mean (x) the amount of any savings in TxDOT's costs resulting from the VE (taking into consideration the costs incurred in reviewing the VE), less (y) the actual costs of studying and preparing the VE as substantiated by Developer and approved by TxDOT in writing in accordance with the Change Order procedures set forth herein, less (z) the difference between the actual cost to perform the Work, as modified by the VE, and the cost of performing the Work according to the Contract Documents. Developer's profit shall not be considered part of the cost.

**22.5.2** Developer is not entitled to share in either collateral or future contract savings. The term "collateral savings" means those measurable net reductions in TxDOT's costs of operation resulting from the VE, including costs of maintenance by TxDOT or any third party, logistics, TxDOT-furnished property and future costs associated with the Project. The term "future contract savings" shall mean reductions in the cost of performance of future construction contracts for essentially the same item resulting from a VE submitted by Developer.

**22.5.3** In the event that Developer proceeds with a Developer-requested change that TxDOT believes should be characterized as a VE, and it is later determined through the dispute resolution process that the change meets the technical qualifications for a VE, the applicable Price shall be reduced by an amount equal to the sum of (a) 100% of any additional costs incurred by TxDOT resulting from the VE plus (b) 75% of estimated net savings.

## **22.6 Implementation of VEs**

**22.6.1** Designs for approved VEs shall be prepared by Developer for incorporation into the Design Documents or Maintenance Procedures, as appropriate and shall be subject to the same design procedures as other aspects of the Project's design.

**22.6.2** Developer's share of any VE cost savings shall be payable at such time as payments would have been made for the Work which is the subject of the VE had the VE not been implemented. If a VE results in a Price increase, payment for the additional construction work will be made in the ordinary course of progress of the Project.

## **22.7 Use of VEs By TxDOT**

All approved or disapproved VEs will become the property of TxDOT, and shall contain no restrictions imposed by Developer on their use or disclosure. TxDOT retains the right to use, duplicate and disclose in whole or in part any data necessary for the utilization of the VE on any other or subsequent projects without any obligation to Developer.

## **SECTION 23. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND ADJACENT PROPERTY OWNERS**

### **23.1 Cooperation with Other Contractors**

Developer acknowledges and agrees that TxDOT has awarded and plans to award contracts for construction and other work at or near the Project Sites. Developer shall fully cooperate and shall adapt scheduling and performance of the Work and other obligations under this Agreement as reasonably necessary to accommodate such other work, and accept any direction that may be provided by TxDOT. Developer shall not comment or permit any actions that will interfere with the performance of work by another contractor.

### **23.2 Interference by Other Contractors**

If Developer asserts that any of TxDOT's other contractors have caused damage to the Work, or have hindered or interfered with the progress or completion of the Work, then, subject only to the right to a Change Order for TxDOT-Caused Delays, Developer's sole remedy shall be to seek recourse against such other contractors.

### **23.3 Coordination with Utility Owners and Adjacent Property Owners**

Developer shall coordinate with Utility Owners and owners of property adjoining the Project, and with their respective contractors, as more particularly described in the Contract Documents.

## **SECTION 24. MISCELLANEOUS PROVISIONS**

### **24.1 Amendments**

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

### **24.2 Waiver**

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

### **24.3 Independent Contractor**

Developer is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with TxDOT other than that of Project developer and independent contractor. In no event shall the relationship between TxDOT and Developer be construed as creating any relationship whatsoever between TxDOT and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of TxDOT. Except as otherwise specified in the Contract Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Developer or any Subcontractor hires to perform or assist in performing the Work.

### **24.4 Successors and Assigns**

The Contract Documents shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

**24.4.1** TxDOT may assign all or part of its right, title and interest in and to any Contract Documents, including rights with respect to the Payment and Performance Bonds, to any other Person.

**24.4.2** Developer may not, without the prior written consent of TxDOT in its sole discretion, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venturer, member or shareholder of Developer may assign, convey, transfer, pledge, mortgage or otherwise encumber its ownership interest in Developer without the prior written consent of TxDOT, in TxDOT's sole discretion.

## **24.5 Designation of Representatives; Cooperation with Representatives**

**24.5.1** 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 the Contract Documents ("Authorized Representative"). Exhibit L hereto provides the initial Authorized Representative designations. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 24.10. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind TxDOT or Developer.

**24.5.2** Developer shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

## **24.6 Survival**

Developer's representations and warranties, the dispute resolution provisions contained in Section 19, the warranties contained in Section 11, the indemnifications and releases contained in Section 18, the Source Code Escrow provisions contained in Section 21.8.4 and all other provisions which by their inherent character or express terms should survive termination of this Agreement and/or any Final Acceptance, shall survive the termination of this Agreement and/or the expiration of the Maintenance Term, shall survive the termination of this Agreement and the expiration of the Maintenance Term (including any Maintenance Period Options).

## **24.7 Limitation on Third Party Beneficiaries**

It is not intended by any of the provisions of the Contract Documents to create any other third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.7, the duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Subcontractor or any Person other than Developer.

## **24.8 Tort Liability; Personal Liability of TxDOT Employees**

TxDOT's authorized representatives are acting solely as agents and representatives of TxDOT when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of TxDOT for actions in their ordinary course of employment.

No agent, consultant, officer or authorized employee of TxDOT nor any member of the Commission, shall be personally responsible for any liability arising under this Agreement.

The Parties agree to provide to each other's authorized representative written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide notice in such form and within such period as is required by law.

In no event shall TxDOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Project Site during the period Developer has operation and control of the Project Site, nor shall TxDOT be liable for any injury, damage or death caused by the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity. Developer expressly acknowledges and agrees that TxDOT's rights in this Agreement to take any action with respect to the Project, including the right to review, comment on, disapprove and/or accept designs, plans, specifications, work plans, construction, installation, traffic management details, safety plan and the like, are discretionary in nature and exist solely for the benefit and protection of TxDOT and do not create or impose upon TxDOT any standard or duty of care toward Developer or any other Person, all of which are hereby expressly disclaimed.

## **24.9 Governing Law**

The Contract Documents shall be governed by and construed in accordance with the laws of the State of Texas.

## **24.10 Notices and Communications**

**24.10.1** Notices under the Contract Documents 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 telefacsimile 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):

All correspondence with Developer shall be sent to Developer's Project Manager or as otherwise directed by Developer's Project Manager. The address for such communications shall be:

Raytheon Company  
196 Chrislea Road  
Woodbridge, Ontario  
L4L 8V1  
Attn: Mr. Victor E. Jordan, Contracts Manager  
Telephone: 905-265-1726  
Facsimile: 905-265-1737  
E-mail: victor\_jordan@raytheon.com



All communications to TxDOT shall be marked as regarding the Statewide Open-Road Toll Collection System Project and shall be delivered as directed by TxDOT's Program Manager.

Texas Department of Transportation  
11801 Stonehollow Drive  
Austin, TX 78758-3299  
Attn: Mr. David Powell  
Telephone: (512) 623-4400  
Facsimile: (512) 623-4444  
E-mail: dpowell@dot.state.tx.us

In addition, copies of all notices regarding disputes, termination and default notices shall be delivered to the following persons:

Texas Department of Transportation  
Office of General Counsel  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701  
Attn: Mr. John J. Ingram  
Telephone: (512) 463-8630  
Facsimile: (512) 475-3070  
E-mail: jingram@dot.state.tx.us

**24.10.2** Notices 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 telefacsimile 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.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Project Manager and technical representatives designated by TxDOT. Developer's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 24.5.1, each party's representative shall be authorized to act on behalf of such party in matters concerning the Work.

**24.10.3** Developer shall copy TxDOT on all written correspondence pertaining to the Project between Developer and any Person other than Developer's Subcontractors, consultants and attorneys.

## **24.11 Further Assurances**

Developer shall promptly execute and deliver to TxDOT all such instruments and other documents and assurances as are reasonably requested by TxDOT to further evidence the obligations of Developer hereunder, including assurances regarding the validity of

(a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

#### **24.12 Severability**

If any clause, provision, section or part of this Agreement is ruled invalid under Section 19 or otherwise by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the applicable Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or part.

#### **24.13 Headings**

The captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

#### **24.14 Entire Agreement**

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

#### **24.15 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 25. CERTAIN ADDITIONAL FEDERAL AND STATE PROVISIONS**

#### **25.1 Title 49, Code of Federal Regulations, Part 29 Debarment and Suspension Certifications**

Developer certifies, under penalty of perjury, that except as noted below, it, nor any other person associated with Developer in the capacity of owner, partner, director, officer, manager is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past 3 years.

Exceptions to this certification are as follows: None

## 25.2 Certification Regarding Use of Contract Funds for Lobbying

Developer certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Developer, 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;

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.

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.

Developer 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.

## 25.3 Child Support Statement for State Grants, Loans and Contracts

Under Section 231.006, Family Code, Developer certifies that Developer is eligible to receive the payments provided for hereunder and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Listed below are the names and social security numbers of the individual or sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25% of Developer.

None

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Section 231.006, Texas Family Code, specifies that a child support obligor who is more than 30 Days delinquent in paying child support and a business entity in which the obligor

is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

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

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

Concurrent with execution of this Agreement, Developer shall submit duplicates of the foregoing statement signed on behalf of all partners, members or joint venturers of the Developer and all other Major Participants.

#### **25.4 Equal Employment Opportunity Certification**

Developer hereby certifies that it has   X   has not        participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

DEVELOPER ACKNOWLEDGES THAT THE FOREGOING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS IS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE DEVELOPER AND EACH NON-EXEMPT SUBCONTRACTOR.

THE FOLLOWING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE DEVELOPER AND EACH NON-EXEMPT SUBCONTRACTOR.

### **SECTION 26. DESIGNATED TXDOT COMPATIBLE PROJECTS**

**26.1.1** TxDOT's right to designate Pilot Systems and Project Segments and to issue Project Segment Supplements and NTPs hereunder shall apply with equal force and effect to Designated TxDOT Compatible Projects to be built and/or operated by an RMA or an Other TxDOT Developer. In such event, TxDOT shall have the option, in its discretion, of issuing the Project Segment Supplement and/or NTP on behalf of the relevant RMA or Other TxDOT Developer (either by acting as a conduit for such Person under the terms of this Agreement, pursuant to a subcontract between TxDOT and such Person or pursuant to such other mechanism acceptable to TxDOT), or assigning its right to issue the Project Segment Supplement and/or NTP directly to such RMA or Other TxDOT Developer, as the case may be. In either case, the methodologies for determining the Pilot System Prices,

Project Segment Prices, Pilot System Maintenance Prices, Project Segment Maintenance Prices, Project Schedules, Liquidated Damages, Stipulated Damages, bonds, letters of credit, maximum liability amounts and all other terms of this Agreement, shall apply with equal force and effect to such Designated TxDOT Compatible Project. In no event shall Developer be entitled to modify its pricing, schedule or other terms and conditions due to the involvement of an RMA or Other TxDOT Developer in the Designated TxDOT Compatible Project, the Pilot System or Project Segment.

**26.1.2** TxDOT also may, in its discretion, (i) enter into a subcontract with the relevant RMA or Other TxDOT Developer with respect to the relevant Designated TxDOT Compatible Project; or (ii) assign to the relevant RMA or Other TxDOT Developer any or all of TxDOT's rights, remedies and obligations under this Agreement with respect to the relevant Designated TxDOT Compatible Project, including payment obligations hereunder for such Designated TxDOT Compatible Project and rights to enforce the terms of this Agreement with respect to such Designated TxDOT Compatible Project.

**26.1.3** In case of such subcontract or assignment under Section 26.1.2, TxDOT shall have no liability or obligations to Developer with respect to the payment and performance by the applicable RMA or Other TxDOT Developer of the obligations under this Agreement with respect to the Designated TxDOT Compatible Project, it being expressly acknowledged and agreed that TxDOT shall act in such capacity as a conduit between the relevant RMA or Other TxDOT Developer, on the one hand, and the Developer, on the other hand; provided, however, that TxDOT will be an express third party beneficiary of such agreement and be entitled to enforce all obligations of Developer thereunder. In the event of such subcontract or assignment of TxDOT's rights, remedies and/or obligations to an RMA or an Other TxDOT Developer, the provisions of this Agreement requiring provision of bonds, letters of credit, insurance and other performance security shall apply separately with respect to the Designated TxDOT Compatible Project, and shall not be commingled or aggregated with the instruments provided to TxDOT for TxDOT's Pilot Systems and/or Project Segments hereunder, it being expressly acknowledged by Developer that it shall provide separate bonds, letters of credit, insurance and other performance security to the RMA or Other TxDOT Developer, as applicable. A termination under this Agreement with respect to a Designated TxDOT Compatible Project shall not constitute a termination of this Agreement with respect to any other Designated TxDOT Compatible Project, Pilot System or Project Segment and a termination under this Agreement with respect to a Pilot System or Project Segment shall not constitute a termination of this Agreement with respect to any Designated TxDOT Compatible Project.

**26.1.4** Upon the request of TxDOT or of any RMA or Other TxDOT Developer to which rights and obligations under this Agreement have been either assigned or are the subject to a subcontract as described in Section 26.1.2, Developer shall execute and deliver to the RMA or Other TxDOT Developer a separate agreement, identical in all material respects to this Agreement, for the Designated TxDOT Compatible Project, which separate agreement, when mutually executed and delivered, shall substitute for and replace the subcontract or assignment and assumption of TxDOT's rights and obligations

under this Agreement with respect to such Designated TxDOT Compatible Project; provided, however, that TxDOT will be an express third party beneficiary of such agreement and be entitled to enforce all obligations of Developer thereunder. A termination with respect to a Designated TxDOT Compatible Project under such separate agreement shall not constitute a termination of this Agreement or otherwise with respect to any other Designated TxDOT Compatible Project, Pilot System or Project Segment and a termination under this Agreement as to a Pilot System or Project Segment shall not constitute a termination under such separate agreement with respect to any Designated TxDOT Compatible Project.

**26.1.5** The exercise by (i) an RMA or Other TxDOT Developer of rights and remedies under this Agreement or a separate agreement described in Section 26.1.4 above with respect to a Designated TxDOT Compatible Project or (ii) TxDOT pursuant to a subcontract between TxDOT and any RMA or Other TxDOT Developer with respect to a ~~Designated TxDOT Compatible Project~~ shall not affect, limit, modify, derogate or diminish TxDOT's rights and remedies under this Agreement with respect to Pilot Systems or Project Segments. Specifically, (x) Developer's obligations and liabilities with respect to a Designated TxDOT Compatible Project shall not apply or be credited against any liability of Developer under this Agreement for Liquidated Damages, Stipulated Damages or pursuant to Section 17.6 or otherwise; and (y) Developer shall provide separate insurance, bonds, letters of credit and any other performance security to the RMA, Other TxDOT Developer or TxDOT relating to a Designated TxDOT Compatible Project and such items shall not be commingled, aggregated or be deemed delivered in lieu or satisfaction of Developer's obligations under this Agreement to provide the same to TxDOT with respect to Pilot Systems or Project Segments.

**26.1.6** With respect to any Designated TxDOT Compatible Project or other toll road project that will be developed pursuant to a comprehensive development agreement ("**Other CDA Project**"), in either case, that is the subject of a procurement by TxDOT, the following additional provisions shall apply:

(a) TxDOT reserves the right to provide a copy of the Contract Documents to any proposer team ("**Proposer**") proposing or interested in proposing on the Designated TxDOT Compatible Project or Other CDA Project.

(b) Except with the prior written consent of TxDOT, in its sole discretion, Developer shall not be entitled to participate on a Proposer team as an equity owner concerning the Designated TxDOT Compatible Project or Other CDA Project, but shall remain available to all Proposers pursuant to the terms of this Section 26 and this Agreement.

(c) Developer agrees to treat each Proposer fairly and equitably in connection with each Designated TxDOT Compatible Project and Other CDA Project. Without limiting the generality of the foregoing, Developer shall (i) consult and cooperate with each such potential Proposer to enable such Proposer to timely prepare for responding to any request for qualifications or proposals; (ii) provide reasonably equal access to Developer personnel (with comparable experience, expertise, capability and

authority) and, subject to execution by such Proposer and Developer of a non-disclosure agreement in the form of Exhibit Z (or such other document acceptable to Developer, in its reasonable discretion, treating all Proposers equitably and fairly in this regard) with respect to proprietary toll system design information, documentation, reports and materials to each Proposer that requests such access, including providing a standardized package of information and data respecting Developer, its services under this Agreement and technical information relating thereto (which standardized package of information shall also be provided to TxDOT and may be included by TxDOT in any procurement package for any Designated TxDOT Compatible Project and Other CDA Project); (iii) equitably allocate its resources, staffing and time for consultations and cooperative work so that no particular potential Proposer gains a competitive advantage over other potential Proposers by reason of disproportionate allocation of resources, staffing and time; (iv) not enter into any sole source or exclusive relationship with any Proposer to provide services for the Designated TxDOT Compatible Project or Other CDA Project; and (v) not knowingly take any action that discriminates for or against any Proposer. TxDOT shall reasonably cooperate with Developer in order to facilitate Developer's interaction with the Proposers, including, as determined appropriate by TxDOT, holding joint Proposer workshops or one-on-one meetings between TxDOT and each Proposer, at which Developer may be invited to participate.

(d) Developer acknowledges and agrees that a Proposer may provide to Developer confidential and proprietary information concerning a Designated TxDOT Compatible Project or Other CDA Project. Such information may include some or all of the following: (i) the Proposer's technical approaches or proposals for project development, design, construction, operation and maintenance; (ii) traffic and revenue data, analysis, modeling and projections developed by the Proposer; (iii) financial data, modeling and plans developed by the Proposer; (iv) information concerning proprietary or licensed technology or software; (v) project pricing and cost methodology information; (vi) drafts of qualification submittal or detailed proposals prior to submittal to TxDOT; and (vii) such other matters as the Proposer deems confidential or proprietary (collectively, "**Proposer Confidential Information**"). Except as required by law, Developer shall (1) not disclose the Proposer Confidential Information provided by one Proposer to any other Proposer or third party; (2) maintain the Proposer Confidential Information in a safe, secure place; and (3) use the Proposer Confidential Information for any purpose other than in connection with assessing the viability of providing, and entering into an agreement to provide, services to the Proposer. Developer acknowledges and agrees that it shall not, by virtue of being provided Proposer Confidential Information, obtain or accede to any intellectual property rights and privileges in such items and materials, including, without limitation, patent, trademark, copyright, licensing or ownership rights.

(e) With respect to each Designated TxDOT Compatible Project or Other CDA Project designated by TxDOT pursuant to this CDA, Developer and TxDOT shall negotiate a Project Segment Supplement for the Designated TxDOT Compatible Project or Other CDA Project as set forth in Section 2.1.1 (unless the Designated TxDOT Compatible Project or Other CDA Project is a Pilot System and there are no changes in the scope or terms and conditions relating to the Pilot System from this Agreement, in which case the



pricing and terms of the Pilot System shall be as set forth in the Contract Documents). To the extent reasonably practicable, as determined by TxDOT, TxDOT anticipates that the technical provisions upon which the Project Segment Supplement are based shall be the basis upon which the technical provisions concerning the Designated TxDOT Compatible Project or Other CDA Project are initially developed; provided, however, that the foregoing shall not modify, limit or diminish TxDOT's rights under clauses (g) and (h) below or under Section 2.1.1.2. TxDOT, in its discretion, shall be entitled to provide the terms of the Project Segment Supplement to Proposers who will be able, in their discretion, to use Developer's services as provided in, and subject to, the terms of the Project Segment Supplement and the Contract Documents. The Project Segment Supplement shall be binding upon Developer. Should any Proposer elect in its proposal or otherwise to utilize Developer's services on the Designated TxDOT Compatible Project or Other CDA Project, Developer pursuant to the Project Segment Supplement or this Agreement, Developer shall provide such services, including, entering into a separate agreement with such Proposer pursuant to this Section 26.

(f) In addition to the Project Segment Supplement, Developer reserves the right, in its discretion, to participate on a Proposer team based on terms other than the Project Segment Supplement. Proposers will be entitled in such event to use Developer's services pursuant to the Project Segment Supplement or as otherwise agreed upon by such Proposer and Developer, in their respective discretion. Notwithstanding the foregoing, such participation will not modify or limit Developer's availability to other Proposers pursuant to the Project Segment Supplement and all other provisions of this Section 26 shall apply thereto. In negotiating any terms other than the Project Segment Supplement with a Proposer, Developer shall (i) provide similar prices for similar services; and (ii) submit to TxDOT the final terms and conditions, pricing and such other information requested by TxDOT with respect to any alternative agreements with Proposers so TxDOT may verify and confirm Developer's compliance with this obligations under this Section 26.

(g) At any time during the procurement of a Designated TxDOT Compatible Project or Other CDA Project and for any reason whatsoever, TxDOT reserves the right, in its sole discretion, to develop, modify, limit, reduce, increase or otherwise alter the technical provisions related to, and the scope of, the toll integrator's services in connection with such project, including modifications and alterations that differ materially from the Technical Provisions and any Project Segment Supplement. In such event, TxDOT may seek to renegotiate the Project Segment Supplement to address such changes and modifications, in which case, if Developer and TxDOT so agree (except to the extent, if any, required under Section 2.1.1, Developer shall not be obligated to agree), a new or modified Project Segment Supplement shall be made available to all Proposers and shall be treated in the same manner as was the original Project Segment Supplement. Alternatively or if the parties cannot agree on a modified or new Project Segment Supplement, TxDOT may opt, in its discretion, to retain and use the original Project Segment Supplement as set forth herein, in which case, it shall remain valid and binding on Developer or (ii) not use the Project Segment Supplement at all, in which case it shall no longer be binding upon Developer and Developer shall be eligible to participate with



any Proposer team as it sees fit, in its discretion and the provisions of this Section 26 (other than this clause (g)) shall not apply to Developer's participation.

(h) Notwithstanding the foregoing and any successful negotiation of a Project Segment Supplement for a Designated TxDOT Compatible Project or Other CDA Project, TxDOT reserves its rights under Section 2.1.1.2 and elsewhere in this Agreement and the right under this CDA to (i) not proceed with the Designated TxDOT Compatible Project or Other CDA Project, and (ii) not provide the Project Segment Supplement to Proposers or identify Developer in any solicitation or procurement documents for such project as an alternative or otherwise, in which case, Developer shall be eligible to participate with any Proposer team as it sees fit, in its discretion, and the provisions of this Section 26 (other than this clause (h)) shall not apply to Developer's participation.

IN WITNESS WHEREOF, this Agreement has been executed as of  
January \_\_\_\_\_, 2006.

**Developer:**

**RAYTHEON COMPANY,**  
a Delaware corporation

By Kent Wong  
Name: Kent Wong  
Title: Senior Manager, Contracts

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By \_\_\_\_\_

APPROVED AS TO FORM:

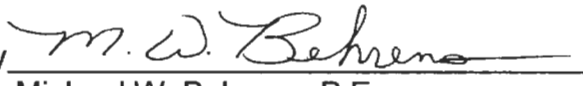
By \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been executed as of January 27, 2006.

**Developer:**

**RAYTHEON COMPANY,**  
a Delaware corporation

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By   
Michael W. Behrens, P.E.  
Executive Director

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

APPROVED AS TO FORM:

By 

## EXHIBIT A

### ABBREVIATIONS AND DEFINITIONS

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

<b>AAP</b>	AASHTO Accreditation Program
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ADA</b>	Americans with Disabilities Act
<b>ASTM</b>	American Society of Testing and Materials
<b>ATA</b>	American Trucking Association
<b>AVC</b>	Automatic Vehicle Classification
<b>CADD</b>	Computer Aided Drafting and Design
<b>CDA</b>	Comprehensive Development Agreement
<b>CD-R</b>	Compact Disc Recordable
<b>CD ROM</b>	Compact Disc Read Only Memory
<b>CFR</b>	Code of Federal Regulations
<b>CQAM</b>	Civil Construction Quality Acceptance Manager
<b>CQCM</b>	Civil Construction Quality Control Manager
<b>CQP</b>	Civil Construction Quality Program
<b>CSC</b>	Customer Service Center
<b>CSJ</b>	Control Section Job
<b>CSTM&amp;P</b>	Materials and Pavements Section of TxDOT Construction Division
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DDD</b>	Detailed Design Documentation
<b>EPD</b>	Escrowed Proposal Documents
<b>FEIS</b>	Final Environmental Impact Statement
<b>FHWA</b>	Federal Highway Administration
<b>FONSI</b>	Finding of No Significant Impact
<b>HCTRA</b>	Harris County Toll Road Authority
<b>ID</b>	Identification
<b>IQCDM</b>	Installation Quality Control Deputy Manager
<b>ITP</b>	Instructions to Proposers
<b>LSLS</b>	Licensed State Land Surveyor
<b>MOMS</b>	Maintenance On-Line Management System
<b>MPH</b>	Miles Per Hour
<b>MSE</b>	Mechanically Stabilized Earth
<b>MTP</b>	Main Toll Plaza

<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NCR</b>	Non-Conformance Report
<b>NEPA</b>	National Environmental Policy Act
<b>NFPA</b>	National Fire Protection Association
<b>NHPA</b>	National Historical Preservation Act
<b>NICET</b>	National Institute for Certified Engineering Technicians
<b>NTP</b>	Notice to Proceed
<b>NTTA</b>	North Texas Turnpike Authority
<b>OCR</b>	Contract Compliance Section of the Office of Civil Rights of the Texas Department of Transportation
<b>OSHA</b>	Occupational Safety and Health Administration
<b>OVT</b>	Owner Verification Tests
<b>PCO</b>	Potential Change Order
<b>PDR</b>	Preliminary Design Review
<b>PHS</b>	Project Host Server
<b>PM</b>	Project Manager
<b>PMP</b>	Project Management Plan
<b>PSQRM</b>	Engineering Professional Services Quality Review Manager
<b>PSQCM</b>	Engineering Professional Services Quality Control Manager
<b>PSQP</b>	Engineering Professional Services Quality Program
<b>QA</b>	Quality Acceptance
<b>QC</b>	Quality Control
<b>QCQAP</b>	Quality Control / Quality Acceptance Program
<b>QC / QRP</b>	Quality Control / Quality Review Program
<b>QS</b>	Qualifications Submittal
<b>RFI</b>	Request For Information
<b>RFDP</b>	Request for Detailed Proposals
<b>RFQ</b>	Request for Qualifications
<b>RMA</b>	Regional Mobility Authority
<b>ROD</b>	Record of Decision
<b>ROE</b>	Right of Entry
<b>ROW</b>	Right-of-Way
<b>RPLS</b>	Registered Professional Land Surveyor
<b>RTP</b>	Ramp Toll Plazas
<b>SH</b>	State Highway
<b>SIR</b>	Site Investigation Report
<b>SWPP</b>	Storm Water Pollution Prevention Plan
<b>TAC</b>	Texas Administrative Code

<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TCLP</b>	Toxicity Characteristic Leaching Procedure
<b>TL</b>	Testing Level
<b>TMUTCD</b>	Texas Manual on Uniform Traffic Control Devices
<b>TP</b>	Technical Provisions
<b>TPDES</b>	Texas Pollutant Discharge Elimination System
<b>TSS</b>	Toll Systems Services
<b>TSSQCM</b>	Toll Systems Services Quality Control Manager
<b>TSSQP</b>	Toll Systems Services Quality Program
<b>TSSQRM</b>	Toll Systems Quality Review Manager
<b>TxDOT</b>	Texas Department of Transportation
<b>UL</b>	Underwriters Laboratories, Inc.
<b>UPS</b>	Uninterruptible Power Supply
<b>US</b>	United States Highway
<b>USACE</b>	United States Army Corps of Engineers
<b>USDOT</b>	United States Department of Transportation
<b>USEPA</b>	United States Environmental Protection Agency
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USGS</b>	United States Geological Survey
<b>VE</b>	Value Engineering
<b>VMS</b>	Variable Message Sign
<b>WBS</b>	Work Breakdown Structure

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

**Acceleration Costs** shall mean those fully documented increased costs reasonably incurred by Developer (that is, costs over and above what Developer would otherwise have incurred) which are directly and solely attributable to increasing the rate at which the Work is performed in an attempt to complete necessary elements of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision and any unexpected material, equipment or crew movement necessary for re-sequencing in connection with acceleration efforts and/or a Recovery Schedule.

**Act** shall have the meaning set forth in Recital B of this Agreement.

**Additional Properties** shall mean any real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures outside of Schematic ROW, that may be acquired in connection with a Pilot System and/or a Project Segment.

**Affiliate** shall mean: (1) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any Major Participant, and (2) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by Developer, any Major Participant or any Affiliate of Developer under clause (1) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

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

**As-Built Documents** shall mean the documents to be provided by Developer as described in Section 2.2.12 of the Technical Provisions.

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

**Base Month** shall mean the month in which this Agreement is executed.

**Baseline Schedule** shall mean the fixed Project Schedule for a Pilot System and/or a Project Segment, submitted within 90 days of NTP for such Pilot System and/or Project Segment, showing the order in which the Developer proposes to carry out the Work, the original planned start and finished dates of activities, and the contemplated dates for completing all work. It is the standard by which certain aspects of Project performance as to the applicable Pilot System and/or Project Segment will be measured, and will be used to compare with current planned dates to determine delays. The Baseline Schedule will also be used to calculate budgeted costs of Work scheduled for earned-value analysis.

**Basic Configuration** shall mean, with respect to each Pilot System and Project Segment, the following elements defining such Pilot System or Project Segment, as set forth in the Owner Design Documents for such Pilot System and Project Segment:

- (a) the number of tolled lanes,
- (b) the number of lane miles,
- (c) the location and unique geographical constraints,
- (d) the approximate location of the toll collection points,
- (e) the approximate location of ramps,
- (f) the approximate location of interchanges and the type of interchanges,

- (g) the approximate right-of-way limits; and
- (h) the approximate location of manual toll plazas, if any

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

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

**Change in Law** shall mean (i) with respect to a Pilot System, the enactment, adoption, modification, repeal or other change in any Law that occurs after the Proposal Date, including any change in the judicial or administrative interpretation of any Law, or adoption of any new Law, which is materially inconsistent with Laws in effect on the Proposal Date, but excluding any such change in or new Law which was passed or adopted but not yet effective as of the Proposal Date; and (ii) with respect to a Project Segment, the enactment, adoption, modification, repeal or other change in any Law that occurs after the issuance of an NTP with respect to such Project Segment, including any change in the judicial or administrative interpretation of any Law, or adoption of any new Law, which is materially inconsistent with Laws in effect on the NTP issuance date, but excluding any such change in or new Law which was passed or adopted but not yet effective as of the NTP issuance date.

**Change Order** shall mean a written order issued by TxDOT to Developer delineating changes in the requirements of the Contract Documents in accordance with Section 13 of this Agreement and establishing, if appropriate, an adjustment to a Price, a System Acceptance Deadline, a Punch List Completion Deadline or a Final Acceptance Deadline.

**Civil Construction Quality Acceptance Manager (CQAM)** shall have meaning set forth in Section 8.1.2.3 of the Technical Provisions.

**Civil Construction Quality Program (CQP)** shall mean the comprehensive program for assuring construction quality control under which monitoring of construction activities is to be performed to maintain and ensure compliance with Environmental Laws and Contract Documents as more particularly described in Section 8.1 of the Technical Provisions.

**Civil Work Plan** shall mean a site layout (including utility work by Developer beyond the limits of the Tolling Zone), construction phasing, traffic control measures, lane closures requirements for those civil work elements outlined in Section 4.2.15 of the Technical Provisions as well as all required Toll Zone equipment, housings and gantries.

**Claim** shall mean a separate demand by Developer, which is disputed by TxDOT, for a time extension under this Agreement, or payment of money or damages arising from work done on behalf of Developer in connection with this Agreement.



**Code Escrow Agent** shall have the meaning set forth in Section 21.8.4(a) of this Agreement.

**Communications** shall mean, for purposes of Section 2.6 of the Technical Provisions, all correspondence, minutes of meetings, and non-internal documents pertaining to the Project reflecting communications with, but not limited to, TxDOT and its contractors, consultants, agents and representatives, Utility Owners, communities, Governmental Entities and members of the public.

**Completion Deadline** shall mean a System Acceptance Deadline, Punch List Acceptance Deadline and/or Final Acceptance Deadline, as the case may be.

**Configuration Management Plan** shall mean the approved plan prepared by Developer pursuant to Section 4.1.7.4 of the Technical Provisions.

**Construction Documents** shall mean all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for installation, integration and construction of each Pilot System and Project Segment in accordance with the Contract Documents.

**Contract Documents** shall mean this Agreement, including all exhibits, and the other documents listed in Section 1.2 of this Agreement, including all amendments to the foregoing, all Change Orders issued, and all Project Segment Supplements, including all amendments to a Project Segment Supplement and Change Orders issued with respect to a Project Segment Supplement.

**Critical Path** shall mean each critical path on the Project Schedule for a Pilot System or a Project Segment, which ends on the respective System Acceptance Deadline, Punch List Acceptance Deadline or Final Acceptance Deadline, as applicable (i.e. the term shall apply only following consumption of all available Float in the schedule for such System Acceptance, Punch List Acceptance or such Final Acceptance, as applicable). The lower case term "critical path" shall mean the activities and durations associated with the longest path(s) through the applicable Project Schedule.

**Critical Path Method (CPM)** shall mean a method for scheduling the Work where all major components of the Work are laid out in a diagram to show the proper sequencing of tasks and the necessary time required for each task, showing which tasks are critical to each other.

**CSC Systems** shall have the meaning set forth in Section 1.1 of the Technical Provisions.

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

**DBE Performance Plan** shall mean Developer's plan for meeting the DBE participation goals submitted with the Proposal.

**DBE Program** shall mean that program designed by TxDOT for federally assisted projects such as the Project, as set forth in Exhibit G to this Agreement.

**Default Draw** shall have the meaning assigned such term in Section 8.2.3.

**Delay Event** shall have the meaning set forth in Section 16.3 of this Agreement.

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

**Design Documents** shall mean all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals, including but not limited to the Detailed Design Documents, necessary for, or related to, the design, installation, integration, testing and maintenance of each Pilot System and Project Segment in accordance with the Contract Documents, the Governmental Approvals and applicable Law.

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

**Designated TxDOT Compatible Projects** shall have the meaning set forth in Recital A of this Agreement.

**Detailed Design Documentation (DDD)** shall have the meaning set forth in Section 4.1 of the Technical Provisions.

**Developed Intellectual Property** shall have the meaning set forth in Section 21.7 of this Agreement.

**Developer** shall mean Raytheon Company, a Delaware corporation, together with its partners, members, joint venturers, employees, agents, officers, directors, shareholders, representatives, consultants, successors and assigns.

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

**Developer-Related Entities** shall mean (i) Developer, (ii) partners, joint venturers and/or members in or with Developer, (iii) Subcontractors (including Suppliers), (iv) any other Persons performing any of the Work, (v) any other Persons for whom Developer may be legally or contractually responsible, and (vi) the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**Deviations** shall mean any change, deviation, modification or alteration from the requirements of the Contract Documents, applicable Law and the Governmental Approvals.

**Differing Site Condition** shall mean: (1) subsurface or latent conditions encountered at the actual boring holes identified in the geotechnical reports included in the Reference Documents listed in Exhibit N, which differ materially from those conditions indicated in the geotechnical reports for such boring holes]; or (2) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in this Agreement. The term shall specifically exclude all such conditions of which Developer had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes (a) changes in surface topography; (b) variations in subsurface moisture content; (c) Utility facilities; (d) Hazardous Materials, including contaminated groundwater; and (e) any conditions which constitute or are caused by a Force Majeure Event.

**Directive Letter** shall have the meaning set forth in Section 13.1.4 of this Agreement.

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

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

**Documentation** shall mean all documents (including but not limited to Design Documents, correspondence, communications, electronic files and records) required to be created, maintained or submitted by Developer pursuant to the Technical Provisions.

**Draw Request** shall mean a Draw Request and Certificate in the form of Exhibit K to this Agreement.

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

**End of Maintenance Term Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 20.4 of this Agreement.

**Engineering Design Documents** shall mean all Design Documents related to the civil construction Work, including design and engineering Work and surveying.

**Engineering Professional Services** shall mean all Work performed under this Agreement other than civil construction Work and Toll Systems Services, including the following services and Work: (1) design and engineering and (2) surveying.

**Engineering Professional Services Subcontractor** shall mean a Subcontractor whose Work consists, in whole or in part, of Engineering Professional Services.

**Engineering Professional Services Quality Control Manager (PSQCM)** shall have the meaning set forth in Section 2.3.3 of the Technical Provisions.

**Engineering Professional Services Quality Program (PSQP)** shall have meaning set forth in Section 2.3.1 of the Technical Provisions.

**Engineering Professional Services Quality Review Manager (PSQRM)** shall mean the manager responsible for the overall management of the PSQP as more particularly described in Section 2.3.4 of the Technical Provisions.

**Environmental Approvals** shall mean all Governmental Approvals arising from or required by any Environmental Law in connection with development of any portion of the Project, including those approvals identified in Section 5.1 of the Technical Provisions.

**Environmental Law** shall mean any Law that regulates or governs the use, generation, manufacture, storage, handling, treatment, recycling, transportation, or disposal of Hazardous Material or pollution or protection of human health, safety, and the environment, including: (1) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq.*); (2) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*); (3) the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*); (4) the Toxic Substances Control Act (15 U.S.C. §§ 2601, *et seq.*); (5) the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*); (6) the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*); (7) the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001, *et seq.*); (8) the Oil Pollution Act (33 U.S.C. §§ 2701, *et seq.*); (9) the Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Facility Community Right-To-Know-Act), Chapter 506 (the Texas Public Employer Community Right-To-Know-Act), and Chapter 507 (the Texas Nonmanufacturing Facilities Community Right-To-Know-Act); (10) the Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991); (11) the Texas Water Code; (12) the Texas Parks and Wildlife Code; (13) the Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act); (14) the Texas Asbestos Health Protection Act (Article 4477-3a, Texas Civil Statutes); (15) the Surface Coal Mining and Reclamation Act (Article 5920-11, Texas Civil Statutes); and (16) any other

analogous state, local or municipal statutes, all as amended, enacted or as they may be amended or enacted from time to time. The term "Environmental Law" shall not include the Occupational Safety and Health Act (29 U.S.C. Section 651, *et seq.*).

**Equipment Identification List** shall mean the equipment and other items set forth on Exhibit R of the CDA.

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

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

**Event of Default** shall have the meaning set forth in Section 16.2 of this Agreement.

**Expendable Materials** shall mean construction materials (e.g. lumber, steel, concrete, re-bar) and equipment (e.g. shovels, power tools, office equipment, computers) that are completely incorporated into the Work or have no salvage value at completion of the Work.

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

**Final Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions with respect to a Pilot System or Project Segment set forth in Section 20.3 of this Agreement.

**Final Acceptance Deadline** shall have the meaning set forth in Section 4.2.3 of this Agreement.

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

**Final Design Documents** shall mean, depending upon the context, the complete final Engineering Design Documents, the complete final Toll System Design Documents, or both, including but not limited to construction, installation and integration drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals needed by Developer to build, install, integrate, test and maintain each Pilot System and Project Segment and satisfying the requirements presented in Section 4 of the Technical Provisions.

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

**Final Maintenance Payment** shall mean, for each Pilot System and Project Segment, payment by TxDOT of the final installment of the Maintenance Price with respect to the maintenance of such Pilot System and/or Project Segment.

**Final Maintenance Payment Draw Request** shall mean the written request for Final Maintenance Payment under this Agreement as described in Section 12.5 of this Agreement.

**Final Payment** shall mean, for each Pilot System and Project Segment, payment by TxDOT of the final installment of the Price with respect to the design, construction, integration and installation of such Pilot System and/or Project Segment.

**Final ROW** shall mean, with respect to each Pilot System and Project Segment, the Schematic ROW and the Additional Properties applicable thereto, but excluding therefrom any portion of the Schematic ROW eliminated from such Pilot System and/or Project Segment by a Change Order.

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

**Float** shall mean generally the difference between early completion times and late completion times for activities as shown on a Project Schedule, and shall include any float contained within an activity as well as any period containing an artificial activity (that is, one which is not encompassed within the meaning of "Work"), as more particularly described in Section 4.3.2 of this Agreement.

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

- (a) Any earthquake, tornado, hurricane or other natural disaster;
- (b) Any epidemic, blockade, rebellion, terrorism, war, riot, act of sabotage or civil commotion;
- (c) With respect to a Pilot System (other than a redesignated Pilot System), the discovery at, near or on the Final ROW of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, the RFDP Documents, was not otherwise known to Developer prior to the Proposal Date and would not have become known to Developer by undertaking reasonable investigation prior to the Proposal Date;

- (d) With respect to a Project Segment (including a redesignated Pilot System), the discovery at, near or on the Final ROW of any archaeological, paleontological or cultural resources provided that the existence of such resources or substances was not disclosed in, or ascertainable from, documents made available or provided to the Developer by TxDOT prior to the date upon which the NTP for that Project Segment was issued, was not otherwise known to Developer prior to such date and would not have become known to Developer by undertaking reasonable investigation prior to such date;
- (e) With respect to a Pilot System (other than a redesignated Pilot System), the discovery at, near or on the Final ROW of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Proposal Date);
- (f) With respect to a Project Segment (including a redesignated Pilot System), the discovery at, near or on the Final ROW of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the date upon which the NTP for that Project Segment was issued);
- (g) Any Change in Law, which (1) requires a material modification of the design of the applicable Pilot System and/or Project Segment, (2) requires Developer to obtain a new major State or federal environmental approval not previously required for the applicable Pilot System and/or Project Segment, (3) results in an increase in Developer's costs directly attributable to the Change in Law of at least \$100,000, (4) results in imposition of additional mitigation requirements on the applicable Pilot System and/or Project Segment due to impacts on archaeological, paleontological, biological or cultural resources, or (5) specifically targets the applicable Pilot System and/or Project Segment or Developer;
- (h) With respect to a Pilot System (other than a redesignated Pilot System), any spill of Hazardous Material by a third party who is not a Developer-Related Entity which occurs after the Proposal Date and is required to be reported to a Governmental Entity and which renders use of the roadway or construction area unsafe absent assessment, containment and/or remediation;
- (i) With respect to a Project Segment (including a redesignated Pilot System), any spill of Hazardous Material by a third party who is not a Developer-Related Entity which occurs after the date upon which the NTP for that Project Segment was issued and is required to be reported to a Governmental Entity and which renders use of the roadway or



construction area unsafe absent assessment, containment and/or remediation;

- (j) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of a material portion of the Work, except to the extent arising out of, related to or caused by, the delay, act, omission, negligence, willful misconduct, recklessness or breach of contract or Law by any of the Developer-Related Entities;
- (k) The suspension, termination, interruption, denial or failure to obtain or non-renewal of any TxDOT-Provided Approval, except to the extent that such suspension, termination, interruption, denial or failure to obtain or non-renewal arises from any modification in the Final Design;
- (l) A traffic incident caused by TxDOT or a third party that causes physical damage to the System; and
- (m) From and after Final Acceptance, malicious or other acts by third parties that Developer is not required to control or supervise causing physical damage or similar occurrence to the System, including vandalism or theft.

The term "**Force Majeure Event**" shall be limited to the matters listed above and shall apply only on an individual Pilot System and Project Segment basis. The occurrence of a Force Majeure Event as to a Pilot System and/or Project Segment shall not apply to other Pilot Systems, Project Segments and aspects of the Project unless the same event has occurred as to such other Pilot Systems, Project Segments and aspects. "**Force Majeure Event**" specifically excludes from its definition the following matters which might otherwise be considered a force majeure event:

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



extent directly due to any of the matters listed in clauses (a) through (m) above;

- (vi) the presence at, near or on a Project Site, as of the Effective Date (with respect to a Pilot System) or the date upon which the applicable NTP is issued (with respect to a Project Segment), of any Hazardous Material, including substances disclosed in any Reference Documents (with respect to a Pilot System (other than a redesignated Pilot System)) or in documents made available or provided to the Developer by TxDOT prior to the date upon which the NTP is issued (with respect to a Project Segment or redesignated Pilot System), as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- (vii) any matters not caused by TxDOT or beyond the control of TxDOT and not listed in clauses (a) through (m) above.

**Functional Availability** shall have the meaning set forth in Section 4.1.2 of the Technical Provisions.

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

**Geotechnical Engineering Reports** shall mean the reports that meet the requirements described in Section 3.2.7 of the Technical Provisions.

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

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

**Hardware** shall mean the physical, tangible and permanent components of a computer or data processing system.

**Hazardous Materials** shall mean (i) any chemical, material or substance at any time defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", or

any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment.

**Hazardous Materials Management** shall mean sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

**Hazardous Materials Management Plan** shall mean the Developer's Plan for Hazardous Materials Management if Hazardous Materials or recognized Potential Environmental Conditions are encountered in connection with a Pilot System or Project Segment.

**Host Computer** shall have the meaning set forth in Section 4.2.6 of the Technical Provisions.

**Hypothetical Project Segment Scenario Maintenance Prices** shall mean those prices for Project Segments submitted with the Proposal and set forth on Exhibit U-4.

**Hypothetical Project Segment Scenario Prices** shall mean those prices for Project Segments submitted with the Proposal and set forth on Exhibit U-2.

**Indemnified Parties** shall mean TXDOT, the State and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees (including the Program Manager), and, with respect to any Project Segment, any regional mobility authority that owns or operates such Project Segment, and any developer under contract to TxDOT with respect to such Project Segment.

**Initial Project Schedule** shall mean, with respect to each Pilot System, the original Project Schedule submitted with the Proposal as more specifically defined in Technical Provisions Section 7.2.1 and, with respect to each Project Segment, the

original Project Segment Schedule submitted in response to a Project Segment Supplement notice.

**Installation and Testing** shall mean the TSS activities that are required to install System Software, Hardware and equipment and test its performance.

**Instructions to Proposers** shall mean the Instructions to Proposers issued by TxDOT on May 20, 2005 as part of the RFDP with respect to the Project, including all attachments thereto and any subsequent addenda.

**Invention** shall have the meaning assigned such term in Section 21.9.1.

**Key Personnel** shall mean those individuals and Developer personnel identified in Section 2.1.2.3 of the Technical Provisions.

**Law** or **Laws** shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity, which is applicable to any portion of the Project, any Final ROW, and/or the Work, whether now or hereafter in effect, including Environmental Laws.

**Letter of Credit Bank** shall have the meaning assigned such term in Section 8.2.3.

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

**Liquidated Damages** shall mean the amount that Developer is required to pay to TxDOT pursuant to Section 17.1 and 17.2 of this Agreement. The Liquidated Damages shall be determined for each Project Segment with reference to the methodology for determination described in Exhibit U-5.

**Losses** shall mean any loss, damage (including personal injury, property damage and natural resource damages), injury, liability, cost, expense (including attorneys' fees and expenses (including those incurred in connection with the enforcement of any provision of this Agreement)), fee, charge, demand, investigation, proceeding, action, suit, claim, judgment, penalty, fine or Third Party Claims.

**Maintenance Base Month** shall mean, for each Pilot System and Project Segment, the month in which the NTP for full design, installation, integration, construction and maintenance of such Pilot System or Project Segment is issued by TxDOT.

**Maintenance Manager** shall have the meaning set forth in Section 4.5.1 of the Technical Provisions.

**Maintenance Option** shall mean one of the five consecutive one-year options to require Developer to maintain some or all of any individual Project Segment(s) after the Maintenance Term.

**Maintenance Option Price** shall mean the Price for extending the Developer's obligation to maintain a Project Segment for a Maintenance Option Term.

**Maintenance Option Term** shall mean, with respect to each Project Segment, the one-year period commencing upon the expiration of the initial Maintenance Term for such Project Segment, or upon expiration of each consecutive one-year period for which TxDOT has exercised its Maintenance Option to extend the Maintenance Term, up to a maximum total of five consecutive years.

**Maintenance Plan** shall have the meaning assigned such term in Section 10.4.2.1 and as further described in Section 4.5.1 of the Technical Provisions.

**Maintenance Price** shall mean the compensation to be paid by TxDOT to Developer for performance of the Maintenance Work with respect to a Pilot System and/or any Project Segment(s).

**Maintenance Price Draw Request** shall mean a Maintenance Price Draw Request and Certificate in the form of Exhibit S to this Agreement.

**Maintenance Records** shall mean the maintenance records that Developer is required to maintain pursuant to Section 4.5.7 of the Technical Provisions.

**Maintenance Report** shall have the meaning set forth in Section 4.5.8 of the TP.

**Maintenance Term** shall have the meaning set forth in Recital G of this Agreement.

**Maintenance Work** shall mean that portion of the Work that Developer is required to perform with respect to a Pilot System and/or Project Segment from and after System Acceptance, except for the Punch List Work.

**Major Subcontracts** shall mean (a) a Subcontract in excess of ten percent (10%) of the applicable Pilot System Price or Project Segment Price for Work prior to Final Acceptance, and (b) a Subcontract in excess of ten percent (10%) of the Pilot System Maintenance Price or Project Segment Maintenance Price for Maintenance Work.

**Master Clock** shall have the meaning set forth in Section 4.1.6 of the Technical Provisions.

**Milestone** shall mean the certain or significant accomplishments towards completion of the Work set forth in the Milestone Payment Structure.

**Milestone Payment** shall mean the percentage of the Pilot System Price or Project Segment Price that TxDOT pays to Developer upon the achievement of the Milestones.

**Milestone Payment Structure** shall mean the payment structure set forth in Exhibit F, establishing percentage payments for the Pilot System Prices and Project Segment Prices that TxDOT shall make to Developer upon achievement of the Milestones set forth therein.

**Minimum Letter of Credit Amount** shall have the meaning set forth in Section 8.2.1 of this Agreement.

**Monthly Progress Reports** shall have the meaning set forth in Section 7.3.2 of the Technical Provisions.

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

**Network Communications** shall have the meaning set forth in Section 2.7.4.2 of the Technical Provisions.

**New Environmental Approval** shall mean (a) any Environmental Approval required for a Pilot System and/or Project Segment, other than TxDOT-Provided Approvals, and (b) any revision, modification, or amendment to any TxDOT-Provided Approval.

**Nonconforming Work** shall mean Work that Developer, any Governmental Entity or TxDOT determines does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law or the Design Documents.

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

**Notice of Termination for Convenience** shall mean written notice issued by TxDOT to Developer terminating the Work of Developer for convenience.

**Notice to Proceed (NTP)** shall mean the written notice issued by TxDOT to Developer authorizing Developer to proceed with Work.

**Operational Testing Procedures** shall have the meaning set forth in Section 4.4.1 of the Technical Provisions.

**Operation Test Report** shall have the meaning set forth in Section 4.4.10 of the Technical Provisions.

**Other TxDOT Developer** shall mean a developer under contract to TxDOT to design, build, finance, operate and/or maintain a toll road.

**Owner Design Documents** shall mean some or all of the Schematic Design, and any as-built drawings, plan sheets, drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records or similar documents furnished by TxDOT to Developer as a preliminary basis for Developer's design.

**Owner Verification Tests (OVT)** shall mean the material tests performed in accordance with the applicable TxDOT test method to verify the accuracy of the tests performed by Developer's QC to ensure that only materials of specified quality or better are accepted and incorporated into the Project.

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

**Payment Bond** shall have the meaning set forth in Section 8.1.2 of this Agreement, a copy of which is attached to this Agreement as Exhibit I.

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

**Performance Audit** shall have the meaning set forth in Section 4.4.11 of the Technical Provisions.

**Performance Audit Procedures** shall have the meaning set forth in Section 4.4.12 of the Technical Provisions.

**Performance Audit Report** shall have the meaning set forth in Section 4.4.13 of the Technical Provisions.

**Performance Bond** shall have the meaning set forth in Section 8.1.1 of this Agreement, a copy of which is attached to this Agreement as Exhibit H.

**Performance Requirements** shall mean the performance requirements described in Sections 2.1.1 and 4.2 of the Technical Provisions.

**Persistent Breach** shall mean if a Tolling Zone in a Project Segment fails to meet or exceed the System Functional Availability performance levels defined in Table 1 of the TP or the System Performance Requirements defined in Table 5 of the TP each day for more than 5 consecutive Days, with compliance measured on a daily basis, or

each day for more than 10 (consecutive or non-consecutive) Days in any calendar quarter (3 month period), with compliance measured on a daily basis.

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

**Pilot Acceptance Test Procedures** has the meaning set forth in Section 4.4.2 of the Technical Provisions.

**Pilot System** shall have the meaning set forth in Recital A of this Agreement. The Pilot Systems are more particularly described in Attachment 2 to the TP. From and after System Acceptance of a Pilot System, a Pilot System shall be considered a Project Segment under this Agreement.

**Pilot System #1** shall be the Pilot System described in Attachment 2 to the TP.

**Pilot System Acceptance** shall mean, with respect to a Pilot System, the achievement of System Acceptance of such Pilot System.

**Pilot System Acceptance Deadline** shall mean, with respect to a Pilot System, the System Acceptance Deadline for such Pilot System.

**Pilot System Completion Deadline(s)** shall mean, with respect to a Pilot System, the Pilot System Acceptance Deadline, the Pilot System Punch List Acceptance Deadline and/or the Pilot System Final Acceptance Deadline.

**Pilot System Approval Test Report** has the meaning set forth in Section 4.4.4 of the Technical Provisions. **Pilot System Final Acceptance** shall mean, with respect to a Pilot System, the achievement of Final Acceptance of such Pilot System.

**Pilot System Final Acceptance Deadline** shall mean, with respect to a Pilot System, the Final Acceptance Deadline for such Pilot System.

**Pilot System Maintenance Price** shall mean the flat, lump-sum annual price for the Maintenance Work for a Pilot System set forth in Section 12.1.3.1 and Exhibit U-3 of this Agreement, as adjusted in accordance with Section 12.1.4 of this Agreement, and as such price may be modified from time to time in accordance with the express provisions of this Agreement.

**Pilot System NTP** shall mean, with respect to a Pilot System, the Notice to Proceed with the Work for such Pilot System issued by TxDOT.

**Pilot System NTP 1** shall mean the first Notice to Proceed issued by TxDOT with respect to a Pilot System.

**Pilot System Price** shall mean the price for the Work for a Pilot System set forth in Section 12.1.1 and Exhibit U-1 of this Agreement, as it may be modified from time to time in accordance with the express provisions of this Agreement.

**Pilot System Punch List Acceptance** shall mean, with respect to a Pilot System, the achievement of Punch List Acceptance of such Pilot System.

**Pilot System Punch List Acceptance Deadline** shall mean, with respect to a Pilot System, the Punch List Acceptance Deadline for such Pilot System.

**Plans** shall mean contract drawings, working drawings, supplemental drawings, detail sheets or exact reproductions thereof, which show the location, character, dimensions and details of the Work to be done.

**Preliminary Design Documentation** shall have the meaning set forth in Section 4.1.7.5 of the Technical Provisions.

**Preliminary Design Review (PDR)** shall mean review of the Preliminary Design Documentation as provided in Section 4.1.7.5 of the Technical Provisions.

**Price Proposal** shall mean Form K (including all subparts) as submitted with the Proposal.

**Price** shall mean, as applicable, a Pilot System Price, a Project Segment Price, a Pilot System Maintenance Price or a Project Segment Maintenance Price.

**Project** shall have the meaning set forth in Recital A to this Agreement.

**Project Host Server (PHS)** shall have the meaning set forth in Section 4.2.10 of the Technical Provisions.

**Project Management Consultant** shall mean Carter & Burgess or such other Person (including the entity, as well as its personnel) designated in writing by TxDOT as its Project Management Consultant.

**Project Management Plan** shall have the meaning set forth in Section 1.2.10 of the Technical Provisions.

**Project Manager** shall mean the individual designated by Developer and approved in writing by TxDOT in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Developer, pursuant to Section 2.3.2 of this Agreement.

**Project Organization Chart** shall mean a graphic representation of the hierarchy and functional areas of responsibility for the Key Personnel.

**Project Schedule** shall have the meaning set forth in Section 7 of the Technical Provisions.



**Project Segment** shall have the meaning set forth in Recital A of this Agreement.

**Project Segment Acceptance** shall mean, with respect to a Project Segment, the achievement of System Acceptance of such Project Segment.

**Project Segment Acceptance Test Procedures** has the meaning set forth in Section 4.4.6 of the Technical Provisions.

**Project Segment Acceptance Test Report** has the meaning set forth in Section 4.4.7 of the Technical Provisions.

**Project Segment Completion Deadline(s)** shall mean, with respect to a Project Segment, the Project Segment System Acceptance Deadline, the Project Segment Punch List Acceptance Deadline and/or the Project Segment Final Acceptance Deadline.

**Project Segment Designation Period** shall mean the period of time commencing on the date of Pilot System NTP1, and terminating at 12:00 a.m., c.s.t. on the fifth anniversary of the date of Pilot System NTP1.

**Project Segment Final Acceptance** shall mean, with respect to a Project Segment, the achievement of Final Acceptance with respect to such Project Segment.

**Project Segment Final Acceptance Deadline** shall mean the Final Acceptance Deadline for a Project Segment.

**Project Segment Maintenance Price** shall mean the price for performing the Maintenance Work for a Project Segment, determined in accordance with Sections 2.1.1.2 and 2.1.2.3 of this Agreement, as adjusted in accordance with Section 12.1.4 of this Agreement, and as such price may be modified from time to time in accordance with the express provisions of this Agreement.

**Project Segment NTP** shall mean, with respect to a Project Segment, the Notice to Proceed with the Project Segment Work issued by TxDOT.

**Project Segment Price** shall mean the price for performing the Work for a Project Segment determined in accordance with Sections 2.1.1.2 and 2.1.2.3 of this Agreement, as such price may be modified from time to time in accordance with the express provisions of this Agreement.

**Project Segment Punch List Acceptance** shall mean, with respect to a Project Segment, the achievement of Punch List Acceptance for such Project Segment.

**Project Segment Punch List Acceptance Deadline** shall mean, with respect to a Project Segment, the Punch List Acceptance Deadline for such Project Segment.

**Project Segment System Acceptance Deadline** shall mean, with respect to a Project Segment, the System Acceptance Deadline for such Project Segment.

**Project Segment Schedule** shall mean, with respect to a Project Schedule, the agreed-upon Project Schedule for such Project Segment.

**Project Segment Substantial Acceptance** shall mean, with respect to a Project Segment, the achievement of Substantial Acceptance of such Project Segment.

**Project Segment Supplement** shall mean a supplement to this Agreement, issued by TxDOT and executed by both Parties, setting forth the Project Segment description, Project Segment Price, Project Segment Maintenance Price, Project Schedule Completion Deadlines, Liquidated Damages, Stipulated Damages and any Project Segment-specific modifications to the Contract Document requirements for a particular Project Segment.

**Project Segment System Acceptance** shall mean, with respect to a Project Segment, the achievement of System Acceptance for such Project Segment.

**Project Segment System Acceptance Deadline** shall mean, with respect to a Project Segment, the System Acceptance Deadline for such Project Segment.

**Project Site** shall, depending upon the context, mean the TxDOT ROW on which a Pilot System or Project Segment is to be located, or the TxDOT ROW on which the entire Project is to be located, and any temporary rights or interests that Developer may acquire at its own cost and expense in connection with such Pilot System, Project Segment or the Project as a whole.

**Proposal** shall mean the proposal submitted on July 15, 2005 by Developer to TxDOT in response to the RFDP.

**Proposal Date** shall mean July 15, 2005.

**Proposer** shall mean each entity that was shortlisted based on TxDOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on December 3, 2004, as amended.

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

**Punch List** shall mean, with respect to each Pilot System and Project Segment, the list of Work which remains to be completed after System Acceptance has been achieved and before Punch List Acceptance, and shall be limited to items of the Work that are necessary to correct minor imperfections and deviations from the requirements of the Contract Documents, Governmental Approvals, applicable Law and Design Documents, but which have no material or adverse effect on the use, safety or operability of the applicable Pilot System and/or Project Segment.

**Punch List Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions with respect to a Pilot System or Project Segment set forth in Section 20.2.1 of this Agreement.

**Punch List Acceptance Deadline** shall have the meaning set forth in Section 4.2.2 of this Agreement.

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

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

**Referenced Standard** shall mean any standard applicable to the Project established by reference contained in the Contract Documents to a described publication.

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

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

**Reimbursable Hazardous Materials Costs** shall mean Developer's actual costs of performance of Hazardous Materials Management, determined in accordance with Section 13.9.3.1 of this Agreement, provided that the 25% mark-ups allowed under Section 13.7.1(a) shall be reduced to 12.5%, and the 25% mark-up allowed under Section 13.7.1(b) shall be reduced to 12.5%.

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

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

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

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

**Request for Detailed Proposals** shall mean the Request for Detailed Proposals issued by TxDOT on May 20, 2005 with respect to the Project, including all attachments thereto and any subsequent addenda.

**Retainage** shall have the meaning set forth in Section 12.3.1 of this Agreement.

**Revised Project Schedule** shall mean TxDOT approved modifications to the Baseline Schedule.

**RFDP Documents** shall mean all of the information and materials supplied to Developer in connection with the issuance of the RFQ, the RFDP, including Instructions to Proposers, the Contract Documents and the Reference Documents and any addenda issued in connection therewith.

**ROW Strip Map** shall mean the diagrams depicting the Schematic ROW applicable to a Pilot System or a Project Segment.

**Rules** shall have the meaning set forth in Recital B of this Agreement.

**Safety and Health Plan** shall have the meaning set forth in Section 8.6 of the Technical Provisions.

**Schematic Design** shall mean the roadway schematic plans applicable to a Pilot System or a Project Segment.

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

**Software** is a general term referring to computer software consisting of the instructions or programs, that are executed by a computer.

**Software Development Plans** shall have the meaning provided in Section 4.1.7.2 of the Technical Provisions.

**Software Source Code** shall have the meaning set forth in Section 21.8.4(b) of this Agreement.

**Source Code Escrow** shall have the meaning set forth in Section 21.8.4(a) of this Agreement.

**State** shall mean the State of Texas.

**Stipulated Damages** shall mean the amount that Developer is required to pay to TxDOT pursuant to Sections 17.4.1 and 17.4.2 of this Agreement. The Stipulated Damages shall be determined for each Project Segment with reference to the methodology for determination described in Exhibit U-5.

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

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

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

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

**System** shall have the meaning set forth in Recital A of this Agreement.

**System Acceptance** shall mean the occurrence of all of the events and satisfaction of all of the conditions with respect to a Pilot System or Project Segment set forth in Section 20.1.2 of this Agreement.

**System Acceptance Deadline** shall have the meaning set forth in Section 4.2.1 of this Agreement.

**System Assurance Monitoring** shall have the meaning set forth in Section 10.4.3.

**Technical Provisions** shall mean the document describing the scope of the Work.

**Test Plan** has the meaning assigned in Section 4.4.1 of the Technical Provisions.

**Third Party Claims** shall mean any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities,

obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

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

**Toll System Design Documents** shall mean all Design Documents relating to or required in connection with the Toll Systems Services.

**Toll Systems Services** shall mean all Work necessary for System Design, Software Development and System Installation and Testing, as provided in Section 2.2 of the Technical Provisions.

**Toll Systems Services Quality Control Manager (TSSQCM)** shall have the meaning set forth in Section 2.2.3.1 of the Technical Provisions.

**Toll Systems Services Quality Program (TSSQP)** shall have the meaning set forth in Section 1.2.2 of the Technical Provisions.

**Toll Systems Services Quality Review Manager (TSSQRM)** shall mean the manager responsible for the overall management of the TSSQP as more particularly described in Section 2.2.3.3 of the Technical Provisions.

**Toll Systems Services Subcontractor** shall mean a Subcontractor whose Work consists, in whole or in part, of Toll Systems Services.

**Toll Zone or Tolling Zone** shall mean a tolling point for one direction of traffic at a single geographic location.

**Tolling System** shall mean the integrated collection of Toll Zones and other Developer-provided equipment supporting tolling for a particular Pilot System or Project Segment.

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

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

- (a) TxDOT-Directed Changes;
- (b) failure or inability of TxDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and

acquisition packages, and other submittals and matters for which response is required, within the time periods (if any) indicated in the Contract Documents, or other failure of TxDOT to act within a reasonable time period with respect to actions which it is required to take under this Agreement, including failure to provide Developer with access to the Site in accordance with the approved Project Schedule, following delivery of written notice from Developer reasonably requesting such action in accordance with the terms and requirements of this Agreement;

- (c) uncovering, removing and restoring Work pursuant to Section 5.4.3 of this Agreement and Section 2.2.5 of the Technical Provisions, if such Work exposed or examined is in conformance with the requirements of the Contract Documents, the Governmental Approvals and applicable Law, unless such conforming Work was performed or materials used without adequate notice to and opportunity for prior inspection by TxDOT, as required in Section 2.2.5 of the Technical Provisions; and

Any suspension of Work arising from litigation shall not be considered a TxDOT-Caused Delay (although it may qualify as a Force Majeure Event under clause (j) of the definition of "**Force Majeure Event**") despite the fact that TxDOT may specifically direct Developer to suspend the Work. TxDOT-Caused Delays shall apply only on an individual Pilot System and Project Segment basis. The occurrence of a TxDOT-Caused Delay as to a Pilot System and/or Project Segment shall not apply to other Pilot Systems, Project Segments and aspects of the Project unless the same event has occurred as to such other Pilot Systems, Project Segments or aspects.

**TxDOT-Directed Changes** shall mean any changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work) that increase Developer's costs by more than \$5,000 (or more than \$25,000 in the aggregate in any one calendar year), which TxDOT has directed Developer to perform as described in Section 13.1 of this Agreement.

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

**TxDOT-Provided Approvals** shall mean, with respect to each Pilot System and Project Segment, the following:

- (a) the ROD or FONSI, as appropriate;
- (b) nationwide permit for the placement of dredged and fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. §1344) and certification that the actions permitted under the Section 404 permit are in compliance with State water

quality requirements and other applicable State laws under Section 401 Water Quality Certification (33 U.S.C. §1341)(1986);

- (c) approvals under the National Historic Preservation Act (16 U.S.C. §470(f)) and implementing regulations (36 C.F.R §§800, et seq.) to the extent TxDOT has agreed to be responsible therefor; and
- (d) the SEP-15 Approval.

**TxDOT Standards** shall mean the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, adopted by the Texas Department of Transportation on June 1, 2004, as modified, supplemented and/or superseded and replaced with the requirements referenced in Exhibit B to this Agreement.

**TxDOT Toll Collection System** shall have the meaning set forth in Section 1.1.1 of the Technical Provisions.

**Unidentified Utility** shall mean any Utility impacted by the Project which is not in one of the categories:

- (a) The Utility line is shown on a Utility Strip Map (irrespective of whether correct ownership is shown) or other Utility information provided by TxDOT or made available to Developer.
- (b) The Utility type (e.g., gas, water, communication, electric) is shown on a Utility Strip Map or other Utility information provided by TxDOT or made available to Developer (differences in material, e.g., clay vs. plastic, shall not be considered a difference in type).
- (c) With respect to a Pilot System (other than a redesignated Pilot System), the Utility is an overhead Utility existing as of the Proposal Date or which commenced installation prior to the Proposal Date or.
- (d) With respect to a Project Segment (including a redesignated Pilot System), the Utility is an overhead Utility existing as of the date on which the NTP for such Project Segment is issued or which commenced installation prior to the date on which the NTP for such Project Segment is issued or.
- (e) The Utility is an extension of an Identified Utility (including a service line extending from a Utility that is not an Unidentified Utility).
- (f) The Utility is located in the same trench as a Utility that is not an Unidentified Utility (e.g. communication duct bank and joint communication cable facilities).



Any appurtenance, including manholes, pedestals, handholes, fire hydrants, and Fxboxes, not shown on a Utility Strip Map or other Utility information provided by TxDOT or made available to Developer that is a component or extension of a Utility that is not an Unidentified Utility is considered a part of the Utility.

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

**Utility(ies) or utility(ies)** shall mean (1) a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public, and/or (2) a private pipeline. The term "Utility" or "utility" specifically excludes (a) storm water facilities providing drainage for the Final ROW, and (b) street lights and traffic signals. The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any service line connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service line.

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

**Utility Strip Maps** shall mean any maps depicting existing Utilities identified by TxDOT applicable to a Pilot System or a Project Segment.

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

**Warranty** shall have the meaning set forth in Section 11.1.1 of this Agreement.

**Warranty Bond** shall have the meaning set forth in Section 8.1.3 of this Agreement.

**Work** shall mean all of the work required to be furnished and provided by Developer under the Contract Documents, including all administrative, design, engineering, support services, procurement, professional, manufacturing, supply, installation, integration, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services

to be furnished and provided by Developer as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance for each Pilot System and Project Segment and to maintain the System in accordance with the standards set forth in the Contract Documents, except for those efforts which such Contract Documents expressly specify will be performed by Persons other than the Developer-Related Entities.

**Work Breakdown Structure (WBS)** shall mean the organization of Project activities and elements as more particularly described in Section 7.2.2 of the Technical Provisions.

**[END OF DEFINITIONS]**

## EXHIBIT B

### AMENDMENTS, SUPPLEMENTS AND MODIFICATIONS TO TXDOT STANDARD SPECIFICATIONS

<u>Exhibit Description</u>		<u>No. of Pages</u>
Exhibit B-1:	Revisions to TxDOT Standard Specifications for Construction of Highways, Streets and Bridges Part 1, General Provisions	10
Exhibit B-2:	Listing of Special Provisions for Standard Specifications	2

## EXHIBIT B-1

### Revisions to TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges Part I, General Provisions

This Exhibit B-1 contains revisions to Part I, General Provisions, of the 2004 TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. In certain cases provisions in the Standard Specifications have been superseded by other provisions of the Contract Documents or the Instructions to Proposers. In those cases, this document identifies provisions of the Contract Documents or the Instructions to Proposers which have replaced the standard clauses. Any cross-references to such deleted provisions shall be deemed references to the provisions, if any, that supersede such deleted provisions. For ease of reference, this document uses the same section numbering as the Standard Specifications. Unless otherwise noted, references to Items and Articles are to the Standard Specifications.

In the event any question arises regarding whether any provision of the TxDOT Standards is applicable to the Contract Documents or how to apply such provision, then TxDOT's interpretation regarding such matter shall control.

## PART I, GENERAL PROVISIONS

### DIVISION I GENERAL REQUIREMENTS AND COVENANTS

#### ITEM 1

#### DEFINITION OF TERMS

Articles 1.33, 1.34, 1.35, 1.36, 1.53, 1.58, 1.64, 1.90, 1.91, 1.92, 1.97, 1.99, 1.108, 1.124, 1.134, and 1.145 are deleted in their entirety and replaced with the Articles set forth below.

**1.33. Contract.** The definition of Agreement set forth in Agreement, Exhibit A.

**1.34. Contract Documents.** The definition of contract documents set forth in Agreement, Exhibit A.

**1.35. Contract Time.** The definition of contract time set forth in Agreement, Exhibit A.

**1.36. Contractor.** The definition of Developer set forth in Agreement, Exhibit A.

**1.53. Engineer.** The Construction Quality Assurance Manager, provided that Developer acknowledges and agrees that TxDOT will be responsible for certain

oversight with respect to the Project, and that any references to and any rights and agreements in favor of Engineer in the TxDOT Standards shall be deemed references to and may be exercised by and inure to the benefit of TxDOT exclusively.

**1.586. Hazardous Materials/Waste.** The definition of Hazardous Materials set forth in Agreement, Exhibit A.

**1.64. Inspector.** The Construction Quality Assurance Firm, except references to Inspector in connection with plant inspections at steel structure fabrication plants, commercial precast prestressed and non-prestressed concrete products plants and job site prestressed concrete plants shall be deemed references to the Department.

**1.90. Payment Bond.** The definition of Payment Bond set forth in Agreement, Exhibit A.

**1.91. Performance Bond.** The definition of Performance Bond set forth in Agreement, Exhibit A.

**1.92. Plans.** The definition of Design Documents set forth in Agreement, Exhibit A.

**1.97. Proposal.** The definition of Proposal set forth in Agreement, Exhibit A.

**1.98. Proposal Guaranty.** The definition of Proposal Bond set forth in Agreement, Exhibit A.

**1.108. Right of Way.** The definition of Final ROW set forth in Agreement, Exhibit A.

**1.124. State.** The definition of State set forth in Agreement, Exhibit A. All references to and all rights and agreements in favor of State in the TxDOT Standards (where the term is not used in a geographic sense) shall be deemed references to and may be exercised by and shall inure to the benefit of TXDOT.

**1.66. Surety.** The definition of Surety set forth in Agreement, Exhibit A.

**1.71. Work.** The definition of Work set forth in Agreement, Exhibit A.

## ITEM

2

## INSTRUCTIONS TO BIDDERS

Item 2 is deleted in its entirety. Provisions regarding instructions to Proposers are set forth in the Instructions to Proposers.

**AWARD AND EXECUTION OF CONTRACT**

Item 3 is deleted in its entirety. Provisions regarding award and execution of the Agreement are set forth in the Instructions to Proposers.

**SCOPE OF WORK**

**4.1. Intent of Plans and Specifications.** The first sentence of Article 4.1 is deleted. Provisions regarding the intent of the Design Documents and specifications are set forth in the Technical Provisions.

**4.2. Significant Changes in the Character of Work.** Article 4.2 is deleted in its entirety. Provisions regarding changes are set forth in Agreement, Section 13.

**4.4. Requests and Claims for Additional Compensation.** Article 4.3 is deleted in its entirety. Provisions regarding changes are set forth in Agreement, Section 13.

**4.5. Maintenance of Traffic.** In the first paragraph of Article 4.5, "Traffic Control Plan" is replaced with "Traffic Control and Sequencing Plans" and "Department" is replaced with "Developer." The second paragraph of Article 4.5 is replaced with the following:

If, in the opinion of the Construction Quality Assurance Manager, the above requirements are not complied with, the Developer shall do such work as deemed necessary by the Construction Quality Assurance Manager; however, this shall not change the legal responsibilities set forth in this Item. The expense for such work will be borne by the Developer.

**4.6. Final Clean up.** The last paragraph of Article 4.7 is replaced with the following:

No direct compensation will be allowed for final clean up work, as such work is considered included in the Price.

**CONTROL OF THE WORK**

**5.1. Authority of Engineer.** Article 5.1 is deleted in its entirety. Provisions regarding supervision, construction procedures and testing are set forth in Agreement, Sections 5.4 and 5.5.

**5.2. Plans and Working Drawings.** Article 5.3 is deleted in its entirety. Provisions regarding working drawings are set forth in the Technical Provisions.

**5.3. Conformity with Plans, Specifications and Special Provisions.** Article 5.3 is deleted in its entirety. Provisions regarding Nonconforming Work are set forth in Agreement, Section 5.6. Provisions regarding design changes are set forth in the Technical Provisions.

**5.4. Coordination of Plans, Specifications and Special Provisions.** Article 5.4 is deleted in its entirety. Provisions regarding order of precedence are set forth in Agreement, Section 1.2.

**5.5. Cooperation of Contractor.** Article 5.5 is deleted in its entirety. Provisions regarding cooperation of Developer are set forth in Agreement, Section 23.

**5.6. Construction Surveying.** Article 5.6 is deleted in its entirety. Provisions regarding construction stakes are set forth in the Technical Provisions.

**5.7. Inspection.** Article 5.7 is deleted in its entirety. Provisions regarding inspection are set forth in Agreement, Section 5.4.

**5.8. Final Acceptance.** Article 5.8 is deleted in its entirety. Provisions regarding Final Acceptance are set forth in Agreement, Section 20.

**CONTROL OF MATERIALS**

**6.1. Sources Control.** Article 6.1 is deleted in its entirety. Provisions regarding sources of supply and quality of materials are set forth in the Technical Provisions, Sections 2.2.2, 2.2.7 and 8. Provisions regarding Buy America are set forth in Agreement, Exhibit D.

**6.2. Sampling, Testing, and Inspection.** Article 6.4 is deleted in its entirety. Provisions regarding samples and tests are set forth in the Technical Provisions, Sections 3.2.7 and 8.1.3.

**LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**

**7.1. Laws to be Observed.** In Article 7.1, "State and its representatives" is replaced with "Indemnified Parties."

**7.2. Permits, Licenses and Taxes.** Article 7.2 is deleted in its entirety. Provisions regarding Governmental Approvals are set forth in Agreement, Section 2.3. Provisions regarding taxes are set forth in Agreement, Section 2.3.9.

**7.3. Patented Devices, Materials and Processes.** In Article 7.3, "State" is replaced with "Indemnified Parties."

**7.4. Insurance and bonds.** Article 7.4 is deleted in its entirety. Provisions regarding insurance are set forth in Agreement, Section 9.

**7.5. Restoring Surfaces Opened by Permit.** In the first sentence of Article 7.5, "Engineer" is replaced with "Department." The last sentence of Article 7.5 is deleted.

**7.7. Public Safety and Convenience.** "Engineer" is replaced with "TxDOT."

**7.9. Barricades and Danger, Warning and Detour Signs and Traffic Handling.** In the first sentence of the last paragraph of Article 7.9, "Engineer" is replaced with "TxDOT."

**7.12. Responsibility for Damage Claims.** In the first paragraph of Article 7.11, "State, its agents and employees" is replaced with "Indemnified Parties." The second paragraph of Article 7.11 is replaced with the following:

The Developer shall save the Indemnified Parties harmless from any and all suits or claims resulting from damage by its operations to any pipeline or underground installation.

The following paragraph is added to Article 7.11:

The Developer may not assert any claim or bring any type of legal action (including Original Action, Third Party Action, or Cross Claim) against any Commissioner, or individual employee of the Texas Department of Transportation for any cause of action or claim for alleged negligence arising out of the Project or Contract. In the event any such claim is asserted or any such legal action is brought by the Developer, the Developer will be ineligible to bid on any contract with the Texas Department of



Transportation during the pendency of such claim or legal action.

**7.14. Contractor's Responsibility for Work.** Article 7.14 is deleted in its entirety. Provisions regarding Developer's responsibility for Work are set forth in the Agreement.

**7.19. Preservation of Cultural Resources.** Article 7.19 is deleted in its entirety. Provisions regarding cultural resources are set forth in the Technical Provisions, Section 4.

## ITEM

8

## PROSECUTION AND PROGRESS

**8.1. Prosecution of Work.** Article 8.1 is deleted in its entirety. Provisions regarding prosecution of the Work are set forth in Agreement, Sections 2, 4 and 5.

**8.2. Progress Schedules.** Article 8.2 is deleted in its entirety.

**8.3. Computation of Contract Time for Completion.** Article 8.3 is deleted in its entirety. Provisions for contract time are set forth in the Agreement.

**8.4. Temporary Suspension of Work or Working Day Changes.** Article 8.4 is deleted in its entirety. Provisions regarding suspension of Work are set forth in Agreement, Section 14.

**8.5. Failure to Complete Work on Time.** Article 8.5 is deleted in its entirety. Provisions regarding failure to complete Work on time are set forth in Agreement, Section 17.

**8.6. Abandonment of Work or Default of Contract.** Article 8.6 is deleted in its entirety. Provisions regarding default are set forth in Agreement, Section 16.

**8.8. Termination of Contract.** Article 8.7 is deleted in its entirety. Provisions regarding termination of Agreement are set forth in Agreement, Section 16.

**8.8. Subcontracting.** Article 8.8 is deleted in its entirety. Provisions regarding Subcontracting are set forth in Agreement, Section 7.3.

**MEASUREMENT AND PAYMENT**

- 9.1. Measurement of Quantities.** Article 9.1 is deleted in its entirety.
- 9.2. Plans Quantity Measurement.** Article 9.2 is deleted in its entirety.
- 9.3. Scope of Payment.** Article 9.2 is deleted in its entirety. Provisions regarding payment are set forth in Agreement, Section 12.
- 9.4. Payment for Extra Work.** Article 9.4 is deleted in its entirety. Provisions regarding payment for extra work are set forth in Agreement, Section 13.
- 9.5. Force Account.** Article 9.5 is deleted in its entirety. Provisions regarding payment for Work on a time and materials basis are set forth in Agreement, Section 13.7.
- 9.6. Progress Payment for Material on Hand.** Article 9.7 is deleted in its entirety. Provisions regarding payment for material on hand are set forth in the Agreement
- 9.7. Final Payment.** Article 9.8 is deleted in its entirety. Provisions regarding final payment are set forth in the Agreement.

## EXHIBIT B-2

### Special Provisions & Specifications to the TxDOT Standard Specifications

This Special Provision consists of supplemental specifications to the 2004 TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. All specifications listed below, reference supplemental specification which are to be incorporated and utilized during the construction of the CDA Projects.

#### ARTICLE 1 SPECIAL PROVISIONS TO THE CDA BY REFERENCE

The following list contains special provisions, which modify the current 2004 TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges and are included in the CDA by reference.

<u>Special Provision Number</u>	<u>Item Number</u>	<u>Description</u>
SP492-001	Item 492	Timber Preservative and Treatment
SP620-001	Item 620	Electrical Conductors
SP740-001	Item 740	Graffiti Removal and Anti-Graffiti Coating

#### ARTICLE 2 SPECIAL SPECIFICATIONS TO THE CDA BY REFERENCE

The following list contains special specifications to be included in the CDA Agreement by reference.

SS5018	Incentive for Using Non-Road Diesel Equipment Powered by EPA Tier 1,2,or 3 Diesel Engines in Nonattainment and Affected Counties.
SS5051	Incentive for Use of Low Emission Diesel in Nonattainment and Affected Counties

## EXHIBIT C

### DEVELOPER'S PROPOSAL COMMITMENTS AND CLARIFICATIONS

The following pages summarize certain commitments made by Developer in its Proposal submitted for the Project, which Developer agrees either meet or exceed the requirements of the other Contract Documents. The commitments set forth herein are included in the scope of the Work. This summary is an overview of certain Developer commitments and is not intended to be an exhaustive list of commitments made in the Proposal that meet or exceed the requirements of the other Contract Documents. In accordance with Section 1.2, the Proposal, to the extent that it meets or exceeds the requirements of the other Contract Documents, shall be included as a Contract Document, even if a particular Developer commitment is not summarized herein. Nothing contained herein shall limit, modify, eliminate or reduce the requirements of the other Contract Documents listed in Section 1.2.

## Proposal Commitments & Clarifications

Section 1.0 – Project Management	
1	<p><b>Reference:</b> TP Sections 1.3, 2.1, 2.2, and 2.7</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 1, Project Management Philosophy</i> – Developer will use its teaming partners and subcontractors, as appropriate, for the work associated with IPDS processes for managing engineering development in order to ensure cost and schedule controls.</p>
2	<p><b>Reference:</b> TP Section 2.4</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 3, Project Plan</i> – Developer will use a Pilot System Preliminary Design Review (PDR) as a forum to discuss the TxDOT Specifications and Developer's preliminary design and suggestions derived from previous open road tolling experience, to ensure that the Project requirements and plans comply with Contract Document requirements and accurately reflect the needs of TxDOT and provide a complete, consistent, and supportable system.</p>
3	<p><b>Reference:</b> TP Section 2.4</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 3, Project Plan</i> – Developer will perform in-process, periodic reporting to TxDOT throughout each step of the hardware/software development, design and testing process and will allow for active TxDOT input, review and approval during the entire process.</p>
4	<p><b>Reference:</b> TP Sections 2.2.1.2 and 8.1</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 4, Management of Professional Services</i> Developer's teaming partner, Arcadis or alternative approved in advance by TxDOT, will visit sites during construction to clarify any discrepancies and/or record any changes made in the field to the PE stamped and approved design packages for incorporation in the As-Built drawings.</p>
5	<p><b>Reference:</b> TP Section 4.5.2 and 4.5.10</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 4, Management of System Maintenance</i> – Developer, with the requisite skills and experience, will be responsible for preventative maintenance and hardware replacement to Raytheon furnished equipment and hardware in the event of a failure, at each Pilot System and Project Segment locale using proximate forces.</p>
6	<p><b>Reference:</b> TP Section 2.1.2.3</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 8, Organizational Structure</i> – Each of Developer's key personnel will be "dedicated to the program", meaning that the particular Pilot System or Project Segment for which they serve as a "key personnel" will be their primary assignment and responding to project requirements will be their number one priority.</p>

7	<p><b>Reference:</b> TP Section 2.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 13, Document, Cost and Schedule Management –</i></p> <p>Developer's key teammates have facilities resident in the State of Texas. Developer will transition its staff and team members to other programs following the completion of a Pilot System or Project Segment, until the next notice to proceed for a Pilot System or Project Segment is issued for the project.</p>
8	<p><b>Reference:</b> TP Sections 4.1 and 4.2</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 15, Installation to Operation -</i></p> <p>Developer will perform a survey with specialized equipment, taking precise measurements of the infrastructure and site. Developer will use this information for development of detailed installation instructions. A later RF survey will provide information for coverage and calibration of the RF components.</p>
9	<p><b>Reference:</b> TP Sections 2.5 and 4.5.6</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 15, Subcontractors –</i></p> <p>Developer will provide for representation of its major suppliers on the Developer Project Board in order to assure (i) that supplier accountability for delivery is given at the appropriate level and (ii) that supplier commitment to actions and changes are established, understood and met, in order to ensure success of the project.</p>
10	<p><b>Reference:</b> TP Section 2.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 18, Project Schedule –</i></p> <p>Developer's time frames to TxDOT for each of the Pilot Systems and Hypothetical Project Segment Scenarios comply with Contract Document requirements, but still provide an opportunity for acceleration, if needed.</p>
<b>Section 2.0 Quality Programs</b>	
11	<p><b>Reference:</b> TP Section 2.2</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 20 Quality Organizations and Key Personnel –</i></p> <p>Developer's Quality organization will provide the resources, responsibility, authority, and organizational freedom to permit objective evaluation during all phases of the development, installation, construction, integration and maintenance of the ORT systems procured under this Agreement. Developer's Quality organization will initiate corrective and preventive actions associated with process and product nonconformities throughout the project, as necessary.</p>
12	<p><b>Reference:</b> TP Section 2.3</p> <p><b>Proposal Commitment:</b> <i>Volume 2, Page 22, Engineering Professional Services Quality Program –</i></p> <p>Developer's EPSQRM Responsibilities and activities will include the following:</p>

	<ul style="list-style-type: none"> <li>Detailed reviews and checks of PS activities. Multiple locations in Texas will allow site visits, as necessary, to verify accuracy of surveys and to "field check" designs;</li> <li>Reporting of issues and problems, and providing monthly project status reports summarizing activities and milestones that allow the TxDOT PM to manage multiple projects effectively;</li> <li>Ensuring all submittals are reviewed prior to submittal to TxDOT by a senior engineer or designer that was completely outside of the project design process and certifying that submittal packages meet PSQP standards.</li> <li>Over-the-shoulder reviews by TxDOT if desired by TxDOT;</li> <li>Review and approval of all design changes. Developer's Area Manager is responsible for ensuring any necessary changes are made to design team and production process;</li> <li>Design Document review and approval. All deliverables are reviewed by Senior Engineering Specialist prior to submission. Review Report is delivered to Developer's Project PM, Area Manager and TxDOT.</li> </ul>
<b>Section 3.0 Technical Approach</b>	
<b>13</b>	<p><b>Reference:</b> TP Section 4.2.3</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 29, System Overview –</i></p> <p>For the Pilot Systems, Developer will employ a 802.11a wireless communications system until fiber is available.</p>
<b>14</b>	<p><b>Reference:</b> TP Sections 4.2.5.5 and 4.5.6</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 33, Equipment Identification List –</i></p> <p>Developer's tolling system will utilize commercial off the shelf components, assembled to form the functional Field Replaceable Units described in the Equipment Identification List.</p>
<b>15</b>	<p><b>Reference:</b> TP Sections 4.2.5.3, 4.2.5.5, 4.5.6, 4.5.8</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 33, Equipment Identification List –</i></p> <p>Developer will ensure that each FRU has a serial number to track warranties and failure trends.</p>
<b>16</b>	<p><b>Reference:</b> TP Sections 2.2.1.2, 2.5 and 8.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 34, Implementation –</i></p> <p>Developer's deployment methods will decouple roadway constructions activities from toll system installation activities, in order to ensure that both activities can occur in parallel and the work can get finished faster.</p> <p>Developer's system will be designed to easily fit onto existing roadways with minimal disruption, no geometric redesign and little grading, including fitting into any highway cross-section, such as bridge structures and tunnels. Professional Services, modular equipment variations and other activities required to apply this design to project-specific highway cross-sections will be included in the associated Project Segment</p>

	Supplement.
17	<p><b>Reference:</b> TP Section 2.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 36, Flexible Communications –</i></p> <p>Developer's generator cabinet will be capable of running the site indefinitely, so long as a fuel supply is available. Developer may deploy large fuel tanks (subject to applicable standards and law) during installation and test activities, in order to ensure that Developer will be able to move forward even if electrical power is not yet available.</p>
18	<p><b>Reference:</b> TP Section 4.2</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 41, System Redundancies –</i></p> <p>Developer will incorporate numerous reliability enhancing features into its Tolling Zone, PHS and MOMS architectures, as follows:</p> <ul style="list-style-type: none"> <li>• Vehicle Detection Redundancy – Vehicle detection equipment is located on both the leading and trailing gantries. Both operate continuously and independently. In addition, overhead detection subsystems are much more reliable than their in-ground counterparts, and maintenance does not require roadwork or road closure</li> <li>• Transaction and Image Processing Redundancy – In the event of a failure of TIP, all transaction and image data is automatically redirected to a secondary TIP (if available through the network) to continue transaction processing, OCR processing, and communications with the Project Host Server, resulting in virtually 100% OCR functional availability.</li> <li>• Video Processing Capability – In the event of a failure of a DSRC component, the system operates in 100% Video Transaction Mode. In addition, with the appropriate license plate to transponder ID customer information, the tolling zone controller can produce "inferred" AVI transactions from the license number when a transponder is mis-read.</li> <li>• Redundant Image Capture – Independent camera systems capture both front and rear images of detected vehicles providing multiple identification opportunities by performing independent OCR's on both front and rear license plates. This improves the reliability of the system, and reduces false (error) OCR reads</li> <li>• Project Host Servers – The PHS is a dual redundant system with a shared Network Attached Storage (NAS) array for image storage. Each PHS has a separate local disk, CPU with RAM, power supply, and network interface card. The PHS is configured as one active PHS and one hot standby PHS. Under normal operations all transaction data is stored on the local disk of the active PHS. In addition, it is simultaneously mirrored to the database on the hot-standby PHS. In the event of a failure of the active PHS, the hot standby PHS assumes control and sends transactions to the CSC</li> <li>• MOMS Server – The MOMS Server consists of a dual node cluster architecture. Like the PHS, each MOMS node has a separate local disk, CPU and RAM, power supply, and network interface card (NIC). In the event of a node failure, the redundant node is switched by the Microsoft 2003 Server Operating System or equivalent.</li> </ul>
19	<p><b>Reference:</b> TP Sections 4.1.1 and 4.2.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 41, Built-In-Test –</i></p> <p>Key performance tests allow Developer's system to sense when a device is degrading but not completely broken, resulting in detection of some problems before</p>



	failure. When performance levels fall below defined acceptable limits, the system outputs a fault report indicating the particular performance degradation.
20	<p><b>Reference:</b> TP Section 4.5.4</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 42, Logistics Delay</i> – Every field replaceable unit (FRU) in the Developer system can be replaced without interrupting traffic flow, eliminating a major source of logistics delay.</p>
21	<p><b>Reference:</b> TP Section 4.2.14</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 44, Housings and Cabinets</i> – Developer will provide an IRU cabinet that is air conditioned and has a backup ventilation system in case of air conditioner failure.</p>
22	<p><b>Reference:</b> TP Sections 4.2.5 and 4.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 45, Maintenance and On-line Monitoring</i> – Developer will supply a MOMS which implements Simple Networking Management Protocol (SNMP), providing a flexible, powerful, easy-to-use solution, based on industry standards for the management of hardware and software resources from a central location.</p>
23	<p><b>Reference:</b> TP Sections 4.2.5 and 4.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 47, Monitoring</i> – Developer will collaborate with TxDOT (or an RMA or Other TxDOT Developer) to identify the specific business rules or customization of those rules required, in order to ensure the MOMS is tailored to the specific implementation and the tolling policy and business rules related to that implementation.</p>
24	<p><b>Reference:</b> TP Sections 4.2.3</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 59, Communications System</i> – Alternative communications methods as approved by TxDOT are used where suitable and cost-effective. Projects that require no more than 25 Mbps WAN throughputs may use 802.11a wireless Ethernet connectivity. Isolated sites over a kilometer from the fiber run may use wireless or the emerging Broadband over Powerline (BPL) connectivity. Full Gigabit Ethernet throughput can be achieved using standard microwave network radios where necessary.</p>
25	<p><b>Reference:</b> TP Sections 4.2.5.5 and 4.5.6</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 61, System Components and Spare Parts</i> – Developer will provide spare FRU's close to each of the Pilot Systems and Project Segments and will keep sufficient local standby stock with specific FRU counts derived from historical repair lead times, quantities installed, and component MTBF data. Developer will include at least one of every FRU in its local standby stock.</p>

26	<p><b>Reference:</b> TP Section 2.5</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 63, Installation, Construction Staging and Traffic Management –</i></p> <p>Developer will adjust its ETC infrastructure and installation work schedule as reasonably required to accommodate the interdependencies between the construction work and the tolling Work.</p>
27	<p><b>Reference:</b> TP Section 4.2.12</p> <p><b>Proposal Commitment:</b> <i>Volume 2, page 67, Compatibility –</i></p> <p>Developer will survey project areas to determine how to best integrate with the existing or planned transportation facilities in the area. As part of the effort, Developer will engage the services of Kinney and Associates, or an alternate design firm as approved by TxDOT, to provide conceptual guidance for its gantry design.</p>

**EXHIBIT D**  
**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	28
Attachment 3 – Wage Determination of the Secretary of Labor	6
Attachment 4 – Equal Employment Opportunity	7
Attachment 5 – Affirmative Action	5
Attachment 6 – Optional Training	4

## **ATTACHMENT 1 TO EXHIBIT D**

### **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 D. Whenever in said required contract provisions references are made to "SHA contracting officer", "SHA resident engineer", or "authorized representative of the SHA", such references shall be construed to mean the TxDOT or its authorized representative.

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

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

**NON-COLLUSION PROVISION.**—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.**—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated within other sections of the Contract and the TxDOT Design-Build DBE Program (Exhibit G to the Contract).

## CONVICT PRODUCED MATERIALS

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

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

## BUY AMERICA REQUIREMENTS

FHWA Federal-aid projects are subject to 23 CFR § 635.410, Buy America requirements. The provisions of 23 CFR § 635.410 are incorporated herein by reference and shall apply to this Agreement.

**ATTACHMENT 2 TO EXHIBIT D**  
**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**  
**FHWA Form 1273**

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## I GENERAL

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

Section I, paragraph 2;

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

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

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. Selection of Labor: During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or



- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

## II. NONDISCRIMINATION

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

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

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action,

will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such

agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

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

**6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
  - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
  - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time

limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

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

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

- a. The records kept by the contractor shall document the following:
  - i. The number of minority and non-minority group members and women employed in each work classification on the project;

- ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
  - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
  - iv. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

### **III. NONSEGREGATED FACILITIES**

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

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

will be for the disabled when the demands for accessibility override (e.g. disabled parking).

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

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

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

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

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

of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## **2. Classification:**

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



advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

### **3. Payment of Fringe Benefits:**

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

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

- a. Apprentices:
  - i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they

are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

- ii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- iii. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- iv. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau,

withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- iv. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at

less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

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

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

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

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and

helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

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

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

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

**V. STATEMENTS AND PAYROLLS**

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

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

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

## 2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Developers 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 Developer 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.
- c. 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.
- d. 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.
- e. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

- 1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
- 2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section

107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

- *"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to*

*provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

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

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

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

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

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

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

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

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction;

violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

3. Instructions for Certification - Lower Tier Covered Transactions:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

\* \* \* \* \*

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

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily

excluded from participation in this transaction by any Federal department or agency.

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

\* \* \* \* \*

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

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

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



# **ATTACHMENT 3 TO EXHIBIT D** **FEDERAL PREAILING WAGE RATE**

**Federal Prevailing Wage Rates for each Project Segment will be set forth in each respective Project Segment Supplement,**

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract.

Index #	Classification	Zone 27	Zone 28	Zone 29	Zone 30	Zone 31	Zone 38	Zone 43	Zone 45	Zone 47	Zone 48	Zone 122	Zone 123	Zone 124
100	Air Tool Operator													
103	Asphalt Heater Operator		11.21											
106	Asphalt Raker	8.99	9.51											
109	Asphalt Shoveler			8.49 9.35	8.58 8.00	9.11	9.58	9.96 10.56	11.01 8.80 14.15	9.30 8.28 17.11	11.13 9.14	9.36	10.63	9.53
112	Batching Plant Weigher													
115	Batterboard Setter							16.00	10.06	9.98				
118	Carpenter													
124	Concrete Finisher (Paving)		12.61	10.73	12.59	10.52	10.54	12.25	12.80	11.73	12.49	10.71	11.70	10.10
130	Concrete Finisher (Structures)	10.39 10.76	13.26	11.04	12.46	10.32	10.65	10.53	12.85	11.70	11.38	12.18	11.64	11.25
136	Concrete Rubber		11.20	10.23	10.40	10.23	11.91	10.95	13.27	11.27	10.80	11.16	10.23	10.03
139	Electrician		17.00	10.00	15.00	17.83	11.75	10.88	10.61	9.49	9.00	10.50	9.00	19.00
148	Fireman							24.11	18.12	17.22	21.79			
150	Flagger	7.83		7.79	7.61		8.89	9.49	8.43	8.06	9.42	7.17	8.60	7.29
157	Form Liner (Paving & Curb)													
160	Form Setter (Paving & Curb)	9.32	9.82	10.50				9.89	11.83	8.00	11.75	9.65	9.48	9.43
166	Form Setter (Structures)	8.15	9.00	8.10	9.95	8.25	8.14	10.85	11.67	10.63	10.51	9.89	10.20	9.81
172	Laborer (Common)	8.15	8.51	8.10	8.86	8.25	8.14	9.34	9.18	11.68	9.81	8.35	8.91	8.25
178	Lineperson													
181	Groundperson													

Index #	Classification	Zone 27	Zone 28	Zone 29	Zone 30	Zone 31	Zone 38	Zone 43	Zone 45	Zone 47	Zone 48	Zone 122	
194	Servicer												
196	Painter (Structures)	1/21/05	1/14/05	1/21/05	1/14/05	1/14/05	1/21/05	1/14/05	1/14/05	1/21/05	1/21/05	1/28/05	14.05
202	Piledriverman	TX05-27	TX05-28	TX05-29	TX05-30	TX05-31	TX05-38	TX05-43	TX05-45	TX05-47	TX05-48	TX05-122	10.67
205	Pipelayer	9.76	8.98	9.61	10.00	10.14	9.82	11.41	12.32	11.43	10.96	10.75	8.22
211	Pneumatic Motor Operator			9.05		9.83	8.85	10.49	11.04	10.85	15.54	9.00	11.00
214	Blaster							11.00	13.17	11.00	12.22		
300	Asphalt Distributor Operator	10.28	9.25	10.30	11.74	9.78	10.95	12.09	13.99	11.45	10.94	12.42	10.46
303	Asphalt Paving Machine Opr.	10.77	11.16	10.42	10.49	11.41	10.62	11.82	12.78	11.82	12.01	11.57	9.38
305	Broom or Sweeper Operator	8.92	8.57	8.26	8.47		8.44	9.74	9.88	9.09	11.19	9.32	8.01
306	Bulldozer Operator		9.76	10.13	11.97	10.60	10.13	11.04	13.22	11.80	11.81	10.90	10.88
315	Conc. Pav. Curing Machine							14.00	12.00		10.00		
318	Opr.												
	Conc. Pav. Finishing Mach.					11.23		12.00	13.63		13.07		
321	Opr.												
321	Conc. Pav. Form Grader Opr.												
324	Conc. Pav. Gang Vibrator												
	Opr.												
326	Conc. Pav. Grinder Opr.												
327	Conc. Pav. Joint Machine												
	Opr.												
329	Conc. Pav. Joint Sealer Opr.								12.50		11.00		15.00
330	Conc. Pav. Float Opr.										11.00		
333	Conc. Pav. Saw Opr.				12.13				13.56	12.30	12.75		
336	Conc. Pav. Spreader	12.09							14.50		10.44		
339	Conc. Pav. Sub-Grader Opr.												
340	Reinf. Steel Machine												
	Operator												
342	Crane, Clamshell, Backhoe	10.95	11.00	11.35	12.14	11.50	11.34	13.66	14.12	12.50	12.71	12.55	Zone 123
	Derrick, Dragline, Shovel												124
	Operator												10.94
357	Form Loader												

Index #	Classification	Zone 27	Zone 28	Zone 29	Zone 30	Zone 31	Zone 38	Zone 43	Zone 45	Zone 47	Zone 48	Zone 122
375	Hoist (Double Drum & Less)											
378	Hoist (Over 2 Drums)											
380	Milling Machine Opr.(Fine Grd)	1/21/05 TX05-27	1/14/05 TX05-28	1/21/05 TX05-29	1/14/05 TX05-30	1/14/05 TX05-31	1/21/05 TX05-38	1/14/05 TX05-43	1/14/05 TX05-45	1/21/05 TX05-47	1/21/05 TX05-48	1/28/05 TX05-122
381	Mixer Operator							10.83 15.25	11.58	10.09	10.33	
387	Mixer Opr.(Concrete Paving)							15.26	15.20	14.29	13.13	
390	Motor Grader Opr. Fine	14.67	13.50	12.91	13.35	14.18	13.58					14.58
393	Grade											10.62
396	Motor Grader Operator, Rough	18.00	11.75	12.39	13.34	15.00	12.66	12.96	14.50	13.11	11.67	15.00
397	Pavement Marking Machine	9.11										12.95
399	Planer Operator	17.50	13.36		10.56		11.48	11.52 17.45	10.04	11.17	8.18	15.00
402	Pump Crete											12.95
405	Roller Opr., Std. Wheel(Plant Mix Pav)	8.92	7.50	8.77	9.75	9.35	9.27	10.24	11.28	9.70	11.07	15.00
408	Roller Opr., Std. Wheel(Flat Whl/Tamp)	8.76	8.06	8.03	9.23	8.49	8.57	9.60	10.92	8.75	10.43	15.00
411	Roller Opr., Pneumatic (Self-Propell)	8.14	7.67	7.88	8.39	8.55	8.44	9.34	11.07	8.87	9.91	15.00
417	Scraper Operator	9.76	8.50	8.98	9.50	8.68	8.88	9.93	11.42	10.29	9.92	15.00
419	Self-Propelled Hammer Opr. Side Boom											15.00
422	Tractor Operator(Crawler Type)	10.72						11.10	12.60	12.00	13.00	15.00
428	Tractor Operator (Pneumatic)		12.00	9.51	11.00		10.02		12.91	11.57	10.07	15.00
434	Traveling Mixer Operator	10.24	12.00	9.31	10.05		9.84	10.04	12.03	10.07	11.00	15.00
437	Trenching Machine, Light											15.00
440	Trenching Machine, Heavy							14.22 14.65	14.00			15.00
443	Wagon Drill, Boring Machine, Post Hole Driller Operator	10.33										15.00
500	Reinforcing Steel Setter (Pav.)											15.00
503	Reinforcing Steel Setter (Str.)											15.00

Index #	Classification	Zone 27	Zone 28	Zone 29	Zone 30	Zone 31	Zone 38	Zone 43	Zone 45	Zone 47	Zone 48	Zone 122
		1/21/05 TX05-27	1/14/05 TX05-28	1/21/05 TX05-29	1/14/05 TX05-30	1/14/05 TX05-31	1/21/05 TX05-38	1/14/05 TX05-43	1/14/05 TX05-45	1/21/05 TX05-47	1/21/05 TX05-48	1/28/05 TX05-122
515	Spread Box Operator			13.12			10.98	10.39	10.92	10.39	11.12	13.00
518	Swamper											10.07
520	Work Zone Barricade Servicer	9.50	8.28	8.88	7.85		9.34	11.15	10.09	9.52	9.94	8.97
522	Sign Installer (PGM)							14.85		8.54		
600	Truck Driver Single Axle, Light	10.03	8.08	9.36	9.62	9.56	9.79	9.98	10.91	10.24	10.07	9.00
603	Truck Driver Single Axle, Heavy	9.17	8.50	9.97	13.13	9.61	10.67	11.88	11.47	10.56	10.65	11.39
606	Truck Driver(Tandem Axle/ Semi)	9.29	8.66	8.84	10.51	9.50	9.14	10.95	11.75	10.33	10.25	9.39
609	Truck Driver Lowboy-Float		12.67	11.81	10.50		12.65	15.30	14.93	11.64	13.16	14.15
612	Truck Driver Transit-Mix								12.08			13.70
615	Truck Driver Winch											11.42
700	Vibrator Operator (Hand Type)											
703	Weigher (Truck Scales)		15.25	11.74		12.08		14.26	13.57			18.00
706	Welder											9.75
707	Slurry Seal Machine Operator											
708	Micro-Surfacing Machine Opr.											

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week

Apprentice Schedule/Period and Rate\*

Power equipment Operators:

Heavy Duty Mechanic  
 Boom Equipment  
 Motor Grader  
 Tractor & Scrapers, Pneumatic  
 and Crawler

<u>1000 Hrs</u>	<u>6th</u>	<u>7th</u>	<u>8th</u>
"	85	90	95
"	"	95	
"	"	95	
"	"	95	

\*The apprentice rate is by percentage of the journeyman's rate; no wages shall be less than the rate for "Laborer (Common)".

# TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES: 27, 28, 29, 30, 31, 38, 43, 45, 47, 48. 122, 123, 124

County Name	ZONE	County Name	ZONE	County Name	ZONE	County Name	ZONE
Anderson	47	Donley	124	Kames	123	Reagan	124
Andrews	124	Kenedy	38	Kaufman	45	Real	124
Angelina	47	Duval	38	Kendall	123	Red River	47
Aransas	123	Eastland	124	Kenedy	38	Reeves	27
Archer	124	Ector	28	Kent	124	Refugio	123
Armstrong	124	Edwards	27	Kerr	123	Roberts	124
Atascosa	123	Ellis	45	Kimble	124	Robertson	47
Austin	123	El Paso	31	King	124	Rockwall	45
Bailey	124	Erath	47	Kinney	27	Runnels	124
Bandera	123	Falls	47	Kleberg	123	Rusk	47
Bastrop	123	Fannin	47	Knox	124	Sabine	47
Baylor	124	Fayette	123	Lamar	47	San Augustine	47
Bee	123	Fisher	124	Lamb	124	San Jacinto	47
Bell	43	Floyd	124	Lampasas	124	San Patricio	122
Bexar	43	Foard	124	LaSalle	38	San Saba	124
Blanco	123	Fort Bend	48	Lavaca	123	Schleicher	124
Borden	124	Franklin	47	Lee	123	Scurry	124
Bosque	47	Freestone	47	Leon	47	Shackelford	124
Bowle	30	Frio	123	Liberty	48	Shelby	47
Brazoria	48	Gaines	124	Limestone	47	Sherman	124
Brazos	43	Galveston	48	Lipscomb	124	Smith	30
Brewster	27	Garza	124	Live Oak	123	Somervell	47
Briscoe	124	Gillespie	123	Llano	123	Starr	38
Brooks	38	Glasscock	124	Loving	124	Stephens	124
Brown	124	Goliad	123	Lubbock	28	Sterling	124
Burleson	47	Gonzales	123	Lynn	124	Stonewall	124
Burnet	123	Gray	124	Madison	47	Sutton	27
Caldwell	123	Grayson	45	Marion	47	Swisher	124
Calhoun	123	Gregg	30	Martin	124	Tarrant	45
Callahan	124	Grimes	47	Mason	123	Taylor	28
Cameron	29	Guadalupe	43	Matagorda	123	Terrell	27
Camp	47	Hale	124	Maverick	38	Terry	124
Carson	124	Hall	124	McCulloch	124	Throckmorton	124
Cass	47	Hamilton	47	McLennan	43	Titus	47
Castro	124	Hansford	124	McMullen	38	Tom Green	28
Chambers	48	Hardeman	124	Medina	123	Travis	43
Cherokee	47	Hardin	48	Menard	124	Trinity	47
Childress	124	Harris	48	Midland	28	Tyler	47
Clay	124	Harrison	30	Milam	47	Upshur	47
Cochran	124	Hartley	124	Mills	124	Upton	124
Coke	124	Haskell	124	Mitchell	124	Uvalde	38
Coleman	124	Hays	43	Montague	124	Val Verde	27
Collin	45	Hemphill	124	Montgomery	48	Van Zandt	47
Collingsworth	124	Henderson	47	Moore	124	Victoria	122
Colorado	123	Hidalgo	29	Morris	47	Walker	47
Comal	43	Hill	47	Motley	124	Waller	48
Comanche	124	Hockley	124	Nacogdoches	47	Ward	124
Concho	124	Hood	47	Navarro	47	Washington	47
Cooke	124	Hopkins	47	Newton	47	Webb	29
Coryell	43	Houston	47	Nolan	124	Wharton	123
Cottle	124	Howard	124	Nueces	122	Wheeler	124
Crane	124	Hudspeth	27	Ochiltree	124	Wichita	45
Crockett	27	Hunt	47	Oldham	124	Wilbarger	124
Crosby	124	Hutchinson	124	Orange	48	Willacy	38
Culberson	27	Irion	124	Palo Pinto	47	Williamson	43
Dallam	124	Jack	47	Panola	47	Wilson	123
Dallas	45	Jackson	123	Parker	45	Winkler	124
Dawson	124	Jasper	47	Parmer	124	Wise	47
Deaf Smith	124	Jeff Davis	27	Pecos	27	Wood	47
Delta	47	Jefferson	48	Polk	47	Yoakum	124
Denton	45	Jim Hogg	38	Potter	28	Young	124
DeWitt	123	Jim Wells	123	Presidio	27	Zapata	38
Dickens	124	Johnson	45	Rains	47	Zavala	38
Dimmit	38	Jones	124	Randall	28		

**ATTACHMENT 4 TO EXHIBIT D**  
**EQUAL EMPLOYMENT OPPORTUNITY**

**SPECIAL PROVISION**  
**000---006**

**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:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) 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
    - (iv) 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 Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the 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 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 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 Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the 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 company EEO policy on bulletin boards

accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company'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 recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 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 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. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of

funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

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 D**

### **AFFIRMATIVE ACTION EXHIBIT D – Attachment 5**

#### **SPECIAL PROVISION 000---004**

#### **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 Bidder'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 (percent)**

**Goals for female  
participation in  
each trade (percent)**

See Table 1

6.9

- c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working 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 the Department 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



County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

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

### SPECIAL PROVISION

000—008

#### Optional Training

This special provision supersedes Section 7.e. of Special Provision entitled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" and Section II.6.b. of Form FHWA -1273 "Required Contract Provisions Federal-Aid Construction Contracts."

The Contractor may elect to provide training under this Special Provision as part of equal employment opportunity/affirmative action program as follows:

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

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

Obtain approval from OCR before training in crafts other than those identified as critical crafts. Submit evidence (i.e. FHWA 1391 or equivalent) demonstrating that underutilization of the above referenced minorities and/or women exists in other skilled job classifications within the Contractor's work force in the entire State or on the project site covered by the Contract. Training will only be allowed in those crafts/classifications identified in the wage determination found in the Contract that have journeyman level status. OCR approval will be required for training in any other classification. If a portion of the work is subcontracted, do not assign a portion of the established training requirements without written approval of the Subcontractor and OCR. If the request is approved, an Optional Training Special Provision must be referenced in and physically attached to the subcontract agreement.

Include a training schedule in the written notice to provide training. Include in the training schedule the training program to be used in fulfilling the training requirements. Use only training programs approved by:

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

Specify the following in the training schedule :

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

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

Upon the start of training, provide OCR with 2 copies of the following registration information for each trainee:

Name

Address

Telephone Number

Social Security Number

Race/Ethnic Origin

Gender

Classification to be trained in

Status in training program (first half, third quarter, last quarter)

Date training will begin

Classification(s) previously trained in and date training completed.

Certify by signing the registration information, the accuracy of the information provided and that the trainee has received a copy of the training program to be used. Require the trainee to sign the registration information. Do not hire an employee as a trainee in any classification in which the employee has successfully completed a training course leading to journeyman level status or in which the employee has been hired at the journeyman level. Compensate trainees at least 60% of the appropriate minimum journeyman level rate specified in the Contract for the first half of the training period, at least 75% for the third quarter of the training period, and at least 90% for the last quarter of the training period, unless apprentices or trainees in an approved existing program

are enrolled as trainees on this project. In that case, apply the appropriate rates approved by the U.S. Department of Labor or OCR in connection with the existing program to all trainees being trained for the same classification who are covered by the this Special Provision. Except as otherwise noted below, the Department will reimburse \$2 for each hour of training provided to women and minorities in compliance with the terms of this Special Provision. Reimbursement may be made even though additional training program funds are received from other sources, provided the source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for off-site training may be made only if:

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

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

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

Name

Social Security Number

Job Classification with specific classification number

Name of Contractor providing training

County the project is located in

Project Number

Control/Section/Job (CSJ) Number

Hours trained this week

Work week ending date

Cumulative total of trained hours to date

Date training began

Graduate date of trainee

Termination date of trainee

Reason of termination with details explaining termination

Wage Rate at termination

Transfer to another project

Project Number of transferred project

County of transferred project

Signature of training coordinator representing the Contractor

During periods of inactivity, submit weekly reports indicating that there was no training during the period. Failure to submit required training documentation may result in the

withholding of the monthly or Final Pay Estimate until all of the required training documentation has been submitted and verified.

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

Optional On-The-Job Training Program

Trainee's Name and Social Security Number

Job Classification

Date of enrollment and graduation, and a statement detailing the trainee's successful completion of training toward journeyman.

## **EXHIBIT E**

### **TxDOT-PROVIDED APPROVALS**

With respect to each Pilot System and Project Segment:

- A record of decision (ROD) or finding of no significant impact, except to the extent of Developer's responsibility for New Environmental Approvals
- Any required USACE Nationwide Permit under Section 404 of the Clean Water Act and Section 401 certification, except to the extent of Developer's responsibility for New Environmental Approvals
- Any required archeological clearances under Section 106 of NHPA for any Schematic ROW, except to the extent of Developer's responsibility for New Environmental Approvals

## EXHIBIT F

### SCHEDULE OF MILESTONE PAYMENTS

#### **Item B-Toll Zone Equipment/MOMS**

Payments for the equipment and subsystem equipment set forth for Item B on the price sheets provided with the Proposal for Pilot System Prices and Project Segment Prices will be paid upon the following schedule:

- 50% of the Item B price shall be paid upon successful completion of the Factory Acceptance Tests.
- 35% of the Item B price will be paid at System Acceptance
- 14% of the Item B price will be paid at Final Acceptance; and
- 1% upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.

#### **Item C-Installation/Construction**

Payments for Installation/Construction of those items set forth for Item C on the price sheets provided with the Proposal for Pilot System Prices and Project Segment Prices, with the exception of the Tolling Zone Equipment Installation, Traffic Control, Incidental Construction and Miscellaneous line items, will be paid according to the following percentage completion schedule:

- 80% upon successful completion of each line item, which is contingent upon TxDOT approval of the work; provided, however, if such line item is not part of the Work for a particular Pilot System or Project Segment, such line item amount shall be paid at System Acceptance;
- 19% of each line item will be paid at System Acceptance; and
- 1% will be paid upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.

Payment for the Tolling Zone Equipment Installation line item will be 99% upon successful installation of the tolling zone equipment, pursuant to TxDOT approval. The other 1% will be paid upon TxDOT approval of the As-Built Drawings.

Payment for the Traffic Control, Incidental Construction and Miscellaneous Service line items will be 99% at System Acceptance. The other 1% will be paid upon TxDOT approval of the As-Built Drawings.

#### **Item D- Professional Services/Contract Management**

Payments for the following listed services set forth for Item D on the price sheets provided with the Proposal for Pilot System Prices and Project Segment Prices. Payments will be made upon deposit of required Software Source Code and other materials as set forth in the Source Code Escrow agreement and paid upon the following schedule:



- The line item set forth in Item D on the price sheets provided with the Proposal for the Pilot System Prices and Project Segment Prices called "Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)" shall be paid upon the following schedule:
  - 15% upon TxDOT approval of the Preliminary System Design Documentation;
  - 15% upon TxDOT approval of the Detailed Design Documentation;
  - 20% at the successful completion of Factory Acceptance Test;
  - 35% at the System Acceptance;
  - 14% at Final Acceptance; and
  - 1% upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.
- The line item set forth in Item D on the price sheets provided with the Proposal for the Pilot System Prices and Project Segment Prices called "Design Development and Project Documentation (including As-builts)" shall be paid upon the following schedule:
  - 20% at approval of Software Development Plan and Configuration Management Plan;
  - 20% at approval of Software Specification;
  - 30% at approval of Preliminary System Design Documentation by TxDOT;
  - 20% at approval of Detailed Design Documentation by TxDOT;
  - 9% at the successful completion of Factory Acceptance Test; and
  - 1% upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.
- The line item set forth in Item D on the price sheets provided with the Proposal for the Pilot System Prices and Project Segment Prices called "Integration and Operational Testing" shall be paid upon the following schedule
  - 10% upon approval of the Test Plan;
  - 10% upon approval of Test and Performance Audit Procedures;
  - 25% at the successful completion of Factory Acceptance Test;
  - 20% at successful completion of Installation Testing;
  - 25% upon issuance of System Acceptance; and
  - 9% at Final Acceptance; and
  - 1% upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.
- The line item set forth in Item D on the price sheets provided with the Proposal for the Pilot System Prices and Project Segment Prices called "Software License Fee" shall be paid upon the following schedule
  - 50% at the successful completion of Factory Acceptance Test;

- 35% upon issuance of System Acceptance;
  - 14% at Final Acceptance; and
  - 1% upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.
- The line item set forth in Item D on the price sheets provided with the Proposal for the Pilot System Prices and Project Segment Prices called "Miscellaneous" shall be paid based upon the following schedule
  - 50% at the successful completion of Factory Acceptance Test;
  - 49% upon issuance of System Acceptance; and
  - 1% upon delivery to TxDOT and TxDOT 's approval of the As-Built Drawings.

**EXHIBIT G**

**THE TEXAS DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PROGRAM FOR FEDERALLY ASSISTED  
COMPREHENSIVE DEVELOPMENT AGREEMENTS**

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## **Objectives and Policy Statement**

The Texas Department of Transportation (TxDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. TxDOT, has received Federal financial assistance from the Federal Highway Administration (FHWA), and as a condition of receiving this assistance, TxDOT will sign an assurance agreement that it will comply with 49 CFR Part 26. TxDOT recognizes that certain modifications to the existing TxDOT DBE program are necessary to adapt the program for use in connection with Comprehensive Development Agreement (CDA) contracts, and has therefore established this specialized CDA DBE program based, to the extent practicable, on the Sample DBE Program approved by FHWA and on the existing TxDOT DBE program.

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

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

James T. Dossett has been delegated as the DBE Liaison Officer. In that capacity, the DBELO is responsible for implementing all aspects of the DBE program, including the CDA DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by TxDOT in its financial assistance agreements with the DOT.

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

## **Texas Department of Transportation**

### **DBE Program for Comprehensive Development Agreements**

#### **49 CFR Part 26**

##### **I. Definitions of Terms**

Except as otherwise defined herein, the terms used in this program have the meanings defined in 49 CFR §26.5.

##### **II. Nondiscrimination (§26.7)**

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

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

##### **III. CDA DBE Program Updates (§26.21)**

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

##### **IV. Quotas (§26.43)**

We do not use quotas in any way in the administration of this CDA DBE program.

##### **V. DBE Liaison Officer (DBELO) (§26.45)**

The TxDOT Executive Director will designate an individual as our DBE Liaison Officer (DBELO). The DBELO is responsible for implementing all aspects of the DBE program (including this CDA DBE program) and ensuring that TxDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the TxDOT Executive Director concerning DBE program matters. The DBELO shall be assigned a personal assistant to support him/her with respect to the DBE program and has access to such additional personnel as may be necessary to implement and administer the program.

The DBELO is responsible for developing, implementing and monitoring the CDA DBE program, in coordination other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information required by TxDOT and DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes TxDOT's progress toward goal attainment and identifies ways to improve progress.
6. Advises TxDOT on DBE matters and achievement.
7. Participates with legal counsel and the project director to determine contractor compliance with good faith efforts.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

#### **VI. Federal Financial Assistance Agreement Assurance (§26.13)**

TxDOT will sign the following assurance, applicable to all DOT-assisted contracts, including CDA contracts, and their administration:

TxDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. TxDOT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. TxDOT's DBE Program, as required by 49 CFR part 26 and as approved by FHWA, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to TxDOT of its failure to carry out its approved program, DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under



18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

## **VII. DBE Financial Institutions**

It is the policy of TxDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted CDA contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO.

## **VIII. Directory (§26.31)**

TxDOT maintains a directory identifying all firms eligible to participate as DBE's (the Directory). TxDOT will refer interested persons to the Directory, which is published annually and is available from TxDOT's Construction Division, Business Opportunity Programs Section, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701, (512) 703-5830. The Directory is updated monthly on the Internet at:

[www.dot.state.tx.us/insdtdot/orgchart/cmd/cserve/dbelst](http://www.dot.state.tx.us/insdtdot/orgchart/cmd/cserve/dbelst).

## **IX. Required Contract Clauses (§§26.13, 26.29)**

**A. Contract Assurance.** We will ensure that the following clause is placed in every DOT-assisted CDA contract and subcontract:

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

**B. Prompt Payment.** We will include the following clause or equivalent in each DOT-assisted CDA contract:

The Contractor shall pay the subcontractor or subprovider for work performed within 10 days after the Contractor receives payment for the work performed by the subcontractor or subprovider. Also, any retained monies on

a subcontractor's work shall be paid to the subcontractor within 10 days after satisfactory completion of all the subcontractor's work. Completion of all the subcontractor's work shall include test, maintenance and other similar periods that are the responsibility of the subcontractor.

For purposes of this clause, satisfactory completion shall have been accomplished when: (1) the subcontractor has fulfilled the contract requirements of both TxDOT and the subcontract for the subcontracted work, including the submission of all submittals required by the specifications and TxDOT; and (2) the work done by the subcontractor has been inspected and approved by TxDOT and the final quantities of the subcontractor's work have been determined and agreed upon.

This clause applies to both DBE and non-DBE subcontractors.

Each contractor awarded a CDA by TxDOT will be required to include an equivalent contract clause in every design or construction subcontract awarded by such contractor.

#### **X. Monitoring and Enforcement Mechanisms (§26.37)**

TxDOT will assign staff to monitor and track actual DBE participation through periodic progress reports and contractor and subcontractor reports of payments in accordance with the following:

##### **A. After CDA Contract Award.**

As described in Section XII, below, each proposer for a TxDOT CDA will be required to submit a DBE Performance Plan as part of a responsible proposal. Following award of an CDA contract and during both the design and construction portions of the project, the CDA contractor will be required to submit DBE commitments, as described in paragraph X.B, below, and monthly progress reports described in paragraph X.C, below, to show that the CDA contractor is meeting the contract goal for the project, or, if the goal is not being met, the CDA contractor must submit satisfactory evidence that it has made good faith efforts, in accordance with Section XII, to meet the goal.

Evidence of good faith efforts, as described in Appendix A of Part 26, and in Section X.B., below, will be monitored by TxDOT throughout the duration of the CDA project.

##### **B. DBE Subcontracts.**

- (e) The contractor will promptly provide TxDOT with a "Subprovider Monitoring System DBE Commitment Worksheet" (Attachment A) and an executed "Subprovider Monitoring System DBE Commitment Agreement" (Attachment B) upon selection of any DBE subprovider not previously identified by the CDA contractor, for the performance of the professional services work. Upon selection of any DBE subcontractor not previously identified by the CDA contractor for the construction work, the contractor will promptly provide TxDOT with an executed "DBE Commitment Agreement Form" (Attachment C).

DBE prime contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on the form entitled "DBE Prime Contractor Payments to Non-DBE Subcontractors," (Attachment D).

A contractor who cannot meet the contract goal, for the professional services work or construction work for the project, shall document the good faith efforts taken to obtain DBE participation. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(1) Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

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

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

(4) Negotiating in good faith with interested DBEs by making a portion of the work available to DBE subcontractors and suppliers and selecting those portions of the work or material needs consistent with the available DBE subcontractors and suppliers.

(5) The ability or desire of the contractor to perform the work of a contract with its own organization does not relieve the Contractor's responsibility to

make a good faith effort. Additional costs involved in finding and using DBEs is not in itself sufficient reason for a contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

(7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

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

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

The contractor will make all reasonable efforts to honor commitments to DBE subproviders and subcontractors identified in the proposal, and those identified after submission of the proposal. Prior to terminating or removing a DBE subprovider or subcontractor for which a DBE commitment has been submitted (either with the proposal or later), the Contractor must demonstrate to the satisfaction of TxDOT that the originally designated DBE was not able or willing to perform.

The contractor will also make a good faith effort to replace a DBE subcontractor or subprovider that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The contractor must submit a completed and executed "DBE Commitment Agreement" for the substitute DBE firm(s). Any substitution of DBEs will be subject to approval by TxDOT. Prior to approving the substitution, TxDOT will request a statement from the DBE concerning the replacement.

The contractor must designate a DBE liaison officer who will administer the contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

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

**C. Eligibility of DBEs.**

TxDOT certifies the eligibility of DBEs, DBE joint ventures and DBE truck-owner operators to perform DBE subcontract work on DOT financially assisted contracts.

Only DBE firms certified either 1) at the time commitments are submitted (either with the proposal or later), or 2) at the time the work is performed are eligible to be counted toward achievement of the DBE goal. For purposes of the DBE goal on a CDA project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

**D. Determination of DBE Participation.** DBE participation will be counted toward meeting the DBE goal in this contract in accordance with the following:

(1) Once a firm is determined to be an eligible DBE, the total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. In the case of an architect/engineer firm, the firm must perform a professional or technical function relating to the project. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(2) A contractor may count toward its DBE goal contract fees paid to disadvantaged truck owner-operators provided the following requirements are met:

(a) The contractor furnishes the DBELO or his/her designee the following information on each owner-operator to be used:

- (i) Name of owner-operator
- (ii) Social security number
- (iii) DBE vendor number

(b) The record of payments to each disadvantaged truck owner-operator, whether paid by the prime contractor or one of his subcontractors, must be attached to the prime contractor's monthly report for the respective month to receive credit toward the DBE goal.

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

(4) A contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function in the work of a contract or purchase order. A DBE is considered to perform a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its

responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(5) Consistent with industry practices and TxDOT's DBE program, a DBE subcontractor or subprovider may enter into second-tier subcontracts, amounting to up to 70 percent of their contract. The DBE subcontractor or subprovider must perform not less than 30% of the value of the contract using employees employed and paid directly by the DBE and equipment owned or rented directly by the DBE. Work subcontracted to a non-DBE does not count towards DBE goals. Brokers and firms with brokerage-type operations will only receive credit for their commission.

(6) A DBE trucking firm is considered to be performing a commercially useful function when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least one fully licensed, insured, and operational truck used on the contract.

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

(b) The DBE may lease trucks from another DBE firm, including certified disadvantaged truck owner-operators. The contractor receives credit for the total value of the transportation services provided by the lessee.

(c) The DBE may lease trucks from a non-DBE, including owner-operators; however, the contractor may only receive credit for the fee or commission the DBE receives as a result of the lease agreement.

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

(7) When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption.

(8) A contractor may count toward its DBE goals expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs assume the actual and contractual responsibility for the provision of the materials, goods and services.

(a) The contractor may count its entire expenditure to a DBE manufacturing material supplier. In order to be considered a manufacturing material supplier, a DBE must operate or maintain a factory or establishment that produces or significantly alters on the premises the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.

Brokers, packagers, manufacturers' representatives or other persons who arrange or expedite transactions shall not be regarded as manufacturers. Should the DBE firm obtain the final product(s) provided to the contractor from a source other than its own factory or establishment, then the DBE firm, for that case, will not be considered to be a manufacturing material supplier and its supply work will be credited toward the DBE goal using an adjustment percentage no greater than that used for a regular dealer.

(b) The contractor may count 60 percent of its expenditures to a DBE regular dealer. In order to be considered a regular dealer, a DBE must conform to the following definition:

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

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

(9) A contractor may count toward its DBE goal the following expenditures to DBE firms that are not manufacturing material suppliers or regular dealers, provided that the fee or commission is determined by TxDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services:

(a) The fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, and assistance in the procurement of materials, or supplies required for the performance of the contract.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies.

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract.

(10) If a contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, by assuring payment for the materials to be placed in the DBE's work and wants to receive credit toward the DBE goal for the

cost of the material, then the material supplier may invoice the DBE firm and be paid by remittance from the DBE firm or the material supplier may invoice the prime contractor and the DBE firm jointly and be paid by the prime contractor making remittance to the DBE firm and the material supplier jointly. The DBE firm must agree to the joint check arrangement. No credit will be given toward the DBE goal for the cost of the DBE's required materials paid by the prime contractor directly to the material supplier.

(11) No credit will be given toward the DBE goal for the cost of materials placed by a DBE firm or for the cost of equipment leased or rented and used in the DBE firm's work when payment for those costs is effected by making a deduction from the prime contractor's payment(s) to the DBE firm.

**E. DBE Progress Reports.**

**(1) Professional Services and Toll System Services.**

(a) The contractor will submit monthly "Subprovider Monitoring System DBE Progress Assessment Reports (Attachment E), after Professional Services and Toll System Services work begins, on DBE involvement to meet the goal and for race-neutral participation. One copy of the report is to be sent to TxDOT DBELO and one copy is to be submitted with the invoice for the design work. Only actual payments made to DBE subproviders are to be reported. These reports will be required until all DBE subprovider activity is completed. TxDOT may verify the amounts being reported as paid to DBEs by requesting copies of canceled checks paid to DBEs on a random basis.

(b) DBE subproviders should be identified on the report by name, type of work being performed, the amount of actual payment made to each during the billing period, cumulative payment amount and percentage of the total contract amount. These reports will be due within fifteen days after the end of a calendar month. Reports are required even when no DBE activity has occurred in a billing period.

(c) Prior to receiving final payment for design work, the CDA contractor must submit a "Subprovider Monitoring System DBE Final Report" form (Attachment F), detailing the DBE payments. The Final Report is to be sent to TxDOT DBELO, and one copy to be submitted with the final invoice for the Professional Services and Toll System Services work. If the DBE goal requirement is not met, documentation of the good faith efforts made to meet the goal must be submitted with the Final Report.

**(2) Construction Work.**

(a) The CDA contractor will submit monthly reports, after construction work begins, on DBE payments to meet the DBE goal and for race-neutral participation. The monthly report is to be sent to the DBELO. These reports will be due within fifteen (15) days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. The "DBE



Monthly Progress Assessment Report" form (Attachment G), is to be used for monthly reporting for the construction portion of the project. TxDOT may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference TxDOT's project number.

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

(c) Monthly reports for truck owner-operators should be in the form of a list of truck owner-operators paid that month, including vendor number and the amount of payment made to each.

(d) Prior to receiving final payment for the construction work, the contractor must submit the "DBE Final Report" form (Attachment H). If the DBE goal requirement is not met, documentation supporting good faith efforts, as outlined in Section X.B, above, must be submitted with the "DBE Final Report".

(e) All such records and reports must be retained for a period of three (3) years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of TxDOT, TxDOT or the DOT.

#### **F. Compliance of Contractor.**

(1) To ensure that DBE requirements of this DOT assisted CDA contract are complied with, TxDOT will monitor the contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the DBELO by the contractor indicating the progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by TxDOT.

(2) The contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor or subprovider, with the following exceptions:

(a) A DBE firm is paid but does not assume contractual responsibility for performing the service;

(b) A DBE firm does not perform a commercially useful function;

(c) Payment is made to a DBE that cannot be linked by an invoice or canceled check to the contract under which credit is claimed;

(d) Payment is made to a broker or firm with a brokering-type operation;

(e) Partial credit is allowed, in the amount of the fee or commission, provided the fee or commission does not exceed that customarily allowed for similar services, for a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract.

(3) The contractor must notify the DBELO if the contractor withholds or reduces payment to any DBE subcontractor. The contractor must submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

(4) Contractors' requests for substitutions of DBE subcontractors or subproviders must be accompanied by a detailed explanation which should substantiate the need for a substitution. The contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to TxDOT's approval of the substitution.

(5) The Contractor's providing work crews and equipment to DBEs is prohibited. The occasional formal leasing of a major piece of equipment with or without operator by the prime contractor to a DBE will be considered on a case-by-case basis by TxDOT.

(6) Failure to provide a DBE Performance Plan in compliance with the requirements of this DBE program will render a proposal nonresponsive. A contractor's failure to comply with the requirements of this DBE Program, including failure to comply with its DBE Performance Plan, will constitute a material breach of the CDA contract. In such a case, TxDOT reserves the right to terminate the CDA contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the contractor, not as a penalty but as liquidated damages to TxDOT, or such other remedy or remedies as TxDOT deems appropriate.

## **XI. Overall and Contract Goals (§26.45 and 26.51)**

### **A. Overall Goal.**

TxDOT has established an overall goal for DBE participation in DOT-assisted CDA projects of 4% of the work associated with such DOT-assisted CDA projects.

TxDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- ☐ DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;

- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

**B. Contract Goals.**

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

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

We will express our contract goals as percentages of (1) the total amount of design work and (2) the total amount of construction work for each DOT-assisted CDA contract.

**XII. Good Faith Efforts (§26.53)**

**A. Information to be Submitted.**

TxDOT treats bidder/proposers' compliance with good faith effort requirements as a matter of responsibility. Each proposer for an CDA contract will be required to include in its proposal the DBE commitments and evidence of good faith efforts in the forms required by the request for proposal, as well as a detailed DBE Performance Plan.

Each solicitation for which an CDA contract goal has been established will require the bidders/proposers to submit with their proposals the following information:

- (1) To the extent identified as of the proposal due date, the names and addresses of DBE firms that will participate in the design of the project and the names and addresses of DBE firms that will participate as subcontractors in the construction portion of the project;
- (2) A description of the work that each identified DBE will perform;
- (3) The dollar amount of the participation of each identified DBE firm;

(4) Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(5) Written and signed confirmation from the identified DBE that it is participating in the contract as provided in the prime contractor's commitment;

(6) Evidence of good faith efforts; and

(7) A DBE Performance Plan containing a detailed description of the contractor's planned methodology for achieving the DBE goals stated in the contract, including a description of the good faith efforts contractor intends to undertake to achieve that goal.

The proposal must also include an affidavit that the proposer will either attain the DBE goals for the contract or will exercise good faith efforts to do so.

**B. Demonstration of Good Faith Efforts.**

The obligation of the CDA bidder/proposer is to make good faith efforts. The bidder/proposer can demonstrate that it has done so either by meeting the contract goals or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26, and are also listed in paragraph X.B., above. Each CDA bidder/proposer will be required to submit a DBE Performance Plan as part of a responsible proposal and good faith efforts.

TxDOT is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts and submitted a sufficient DBE Performance Plan to be regarded as responsible. We will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before we commit to the performance of the CDA contract by the bidder/proposer.

**C. Administrative Reconsideration.**

Within 5 days of being informed by TxDOT that it is not responsible because it has not 1) documented sufficient good faith efforts or 2) submitted a satisfactory DBE Performance Plan, a bidder/proposer may request administrative reconsideration. The reconsideration official will not have played any role in the original determination that the bidder/proposer did not make document sufficient good faith efforts or submit a satisfactory DBE Performance Plan. The request for reconsideration should be made in writing to the following reconsideration official(s):

**[name and contact information of appropriate individual]**

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issues of whether it met the goal or

made adequate good faith efforts to do so, and whether it submitted a satisfactory DBE Performance Plan. The bidder/proposer will have the opportunity to meet in person with the designated reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so, and whether it submitted a satisfactory DBE Performance Plan. We will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer did or did not meet the goal or make adequate good faith efforts to do so, or did not submit a satisfactory DBE Performance Plan. The result of the reconsideration process is not administratively appealable to TxDOT or DOT.

**D. Good Faith Efforts When a DBE is Replaced on a Contract.**

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify TxDOT [RE/CM] immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may initiate a termination for default proceeding.

**XIII. Counting DBE Participation (§26.55)**

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

**XIV. Certification (§26.83(a))**

Only DBE firms certified on TxDOT's statewide DBE Directory will be eligible to participate as DBEs in our program.

**XV. Information Collection and Reporting**

**A. Bidders List.**

TxDOT will use the TxDOT bidders list.

**B. Monitoring Payments to DBEs.**

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of TxDOT, TxDOT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them in accordance with this DBE Program.

We will review payments to DBE subcontractors and subproviders to ensure that the actual amount paid to DBE subcontractors and subproviders equals or exceeds the dollar amounts stated in the DBE commitments submitted in accordance with this DBE Program.

**C. Reporting to TxDOT.**

We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted CDA contracts.

**D. Confidentiality.**

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement, to a third party (other than TxDOT or DOT) without the written consent of the submitter.

**E. Noncompliance Complaint.**

Any person who believes that TxDOT has failed to comply with the DBE program may file a written complaint under 49 CFR Part 26.103. The complaint may be sent to the Federal Highway Administration, 126 Federal Office Building, Austin Texas 78701-3276.

**F. Attachments.**

- Attachment A – Subprovider Monitoring System DBE Commitment Worksheet
- Attachment B – Subprovider Monitoring System DBE Commitment Agreement
- Attachment C – DBE Commitment Agreement Form (Construction)
- Attachment D – DBE Prime Contractor Payments to Non-DBE Subcontractor
- Attachment E – Subprovider Monitoring System DBE Progress Assessment Report
- Attachment F – Subprovider Monitoring System DBE Final Report

Attachment G - DBE Monthly Progress Report (Construction

Attachment H – DBE Final Report (Construction)

TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
[Name]  
[Title]

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

This CDA Disadvantaged Business Enterprise Program is accepted by:

\_\_\_\_\_  
[TxDOT Representative]

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

## ATTACHMENT A

### Subprovider Monitoring System DBE Commitment Worksheet

Contract #: \_\_\_\_\_ Assigned Goal: \_\_\_\_\_ % Federally Funded: \_\_\_\_\_ State Funded: \_\_\_\_\_

Prime Provider: \_\_\_\_\_ Total Contract Amount: \_\_\_\_\_

DBE: \_\_\_\_\_ Vendor ID #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
(First 11 Digits Only)

Subprovider (List All)	Type of Work	Vendor ID # (First 11 Digits Only)	D=DBE Expiration Date	\$ Amount or % of Work
Subprovider(s) Contract or % of Work Totals				

Total DBE Commitment Dollars \$ \_\_\_\_\_

Total DBE Commitment Percentages of Contract \_\_\_\_\_ %



**Texas Department of Transportation  
Subprovider Monitoring System  
DBE Commitment Agreement**

Contract # \_\_\_\_\_ Assigned Goal: \_\_\_\_\_ % Prime Provider: \_\_\_\_\_

TEXAS DEPARTMENT OF TRANSPORTATION  
TxDOT Open-Road Toll Collection System  
313619\_3.DOC

## ATTACHMENT C

### DBE Commitment Agreement Form (Construction)

Project #:	County:	Contract-CSJ:
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Items of work to be performed\* (attach a list of work items if more room is required):

\* All hauling quantities and units of measure should match the bid tab item whenever possible. If listing items by hours, or by lump sum amounts, please provide calculations to substantiate the quantities listed.

Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item

Total Commitment Amount (including attachments):

If the DBE is a material supplier on this project, the following information is required:

1. Is the material to be supplied to be modified, blended, quarried, or fabricated by the DBE? If Yes, Please explain in detail.	1.
---	----

If you answered Yes to Question 1 above, you do not need to answer questions 2-5

2. Where, and from whom, is the DBE material supplier getting the materials?	2.
3. Where does the DBE material supplier store or warehouse the material before it is delivered to the project site?	3.
4. Whose equipment will be used to deliver the DBE's material to the project site? Explain in detail any arrangements the DBE has with other distributors, hauling firms, and freight companies.	4.
5. Is the DBE going to be paid with a joint check for materials supplied? If Yes, explain in detail	5.

**IMPORTANT: The signature of the prime contractor and the DBE, and the total commitment amount must always be on the same page**

Prime Contractor: Address: Phone:	Name/Title: (please print) Signature: Date:
DBE: Vendor # Address: Phone:	Name/Title (please print) Signature: Date:
Subcontractor, if the DBE will be a second tier sub Subcontractor: Address: Phone:	Name/Title (please print) Signature: Date:

**ATTACHMENT D**

**Texas Department of Transportation  
DBE Prime Contractor Payments  
to Non-DBE Subcontractors**

**Project:**  
**County:**  
**Letting Date:**  
**Contractor:**

**Contract CSJ:**  
**District:**  
**For the Month of (Mo/Yr):** \_\_\_\_\_ / \_\_\_\_\_

**Contract Amount: \$** \_\_\_\_\_

Name of Non-DBE Subcontractor	\$ Amount Paid this Period	Total \$ Amount Paid to Date

Send this report to the TxDOT Contract Manager. Report is due within 15 days following the end of each calendar month.

Signature: \_\_\_\_\_  
Company Official

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

**Texas Department of Transportation  
Subprovider Monitoring System DBE Progress Assessment Report**

Contract #: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_  
Prime Provider: \_\_\_\_\_

[illegible]

1 Copy with Invoice – [TxDOT Contract Manager]  
1 Copy – [TxDOT, DBELO]

I hereby certify that the above is a true and correct statement of the amounts paid to the firms listed above.

Signature – Company Official or DBE Liaison Officer

Date \_\_\_\_\_

## ATTACHMENT F

### **Texas Department of Transportation Subprovider Monitoring System DBE Final Report**

The Final Report Form should be filled out by the Contractor and submitted to the [TxDOT Contract Manager] and the [TxDOT DBELO] for review upon completion of the contract. The report should reflect **all design subcontract activity** on the project. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

DBE Goal: \_\_\_\_\_

Total Contract Amount: \$ \_\_\_\_\_ Total Contract Amount: \$ \_\_\_\_\_

Contract Number: \_\_\_\_\_

Vendor ID #	Subprovider	Total # Amount Paid to Date
TOTAL		

This is to certify that \_\_\_\_% of the work was completed by the DBE subproviders as stated above.

\_\_\_\_\_  
By: CDA Contractor

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

Subscribed and sworn to before me, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public \_\_\_\_\_ County

My Commission expires: \_\_\_\_\_

## ATTACHMENT G

### Texas Department of Transportation (Construction) DBE Monthly Progress Report

Project: \_\_\_\_\_  
County: \_\_\_\_\_  
Letting Date: \_\_\_\_\_  
Contractor: \_\_\_\_\_  
Contract Amount: \$ \_\_\_\_\_

Contract CSJ: \_\_\_\_\_  
District: \_\_\_\_\_  
For the Month of (Mo/Yr): \_\_\_\_\_ / \_\_\_\_\_  
DBE : \_\_\_\_\_ %  
DBE Goal Dollars: \$ \_\_\_\_\_

VENDOR NUMBER	NAME OF DBE SUB/SUPPLIER	TYPE OF WORK	*DBE \$ AMOUNT PAID FOR WORK PERFORMED THIS PERIOD	** \$ AMOUNT PAID TO NON- DBE 2 <sup>nd</sup> TIER SUBS AND HAULERS	AMOUNT PAID TO DBE TO DATE

- \* GOAL/COMMITMENT PROGRESS REPORT AMOUNT AND/OR RACE-NEUTRAL AMOUNT. DO NOT SUBTRACT NON-DBE SECOND-TIER SUBCONTRACTORS AND HAULERS FROM THIS COLUMN.
- \*\* REPORT AMOUNT OF PAYMENT DBE SUBCONTRACTORS PAID TO NON-DBE SUBCONTRACTORS/HAULERS

IF USING A NON-DBE HAULING FIRM THAT LEASES FROM DBE TRUCK OWNER-OPERATORS, PAYMENTS MADE TO EACH OWNER-OPERATOR MUST BE REPORTED SEPARATELY.

ANY CHANGES TO THE DBE COMMITMENTS APPROVED BY TXDOT MUST BE REPORTED TO THE [TXDOT CONTRACT MANAGER].

SUBMISSION OF THIS REPORT FOR PERIODS OF NEGATIVE DBE ACTIVITY IS REQUIRED. THIS REPORT IS REQUIRED UNTIL ALL DBE SUBCONTRACTING OR MATERIAL SUPPLY ACTIVITY IS COMPLETED.

I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT OF THE AMOUNTS PAID TO THE DBE FIRMS LISTED ABOVE.

SIGNATURE: \_\_\_\_\_

COMPANY OFFICIAL

DATE

THIS REPORT MUST BE SENT TO THE [TXDOT CONTRACT MANAGER'S] OFFICE WITHIN 15 DAYS FOLLOWING THE END OF THE CALENDAR MONTH.

## ATTACHMENT H

### **Texas Department of Transportation DBE Final Report (Construction)**

THE DBE FINAL REPORT FORM SHOULD BE FILLED OUT BY THE CONTRACTOR AND SUBMITTED TO THE BUSINESS OPPORTUNITY PROGRAMS SECTION UPON COMPLETION OF THE PROJECT. ONE COPY OF THE REPORT MUST BE SUBMITTED TO THE AREA ENGINEER'S OFFICE. THE REPORT SHOULD REFLECT ALL DBE ACTIVITY ON THE PROJECT. THE REPORT WILL AID IN EXPEDITING THE FINAL ESTIMATE FOR PAYMENT. IF THE DBE GOAL REQUIREMENTS WERE NOT MET, DOCUMENTATION SUPPORTING GOOD FAITH EFFORTS MUST BE SUBMITTED.

Project: \_\_\_\_\_  
County: \_\_\_\_\_  
Letting Date: \_\_\_\_\_  
Control Project: \_\_\_\_\_

Contract CSJ: \_\_\_\_\_  
DBE Goal: \_\_\_\_\_ %  
Contract Amount: \$ \_\_\_\_\_

Contractor: \_\_\_\_\_

VENDOR NUMBER	NAME OF DBE SUB/SUPPLIER	*DBE GOAL – TOTAL \$ AMOUNT PAID TO DATE	** \$ AMOUNT PAID TO NON-DBE 2 <sup>nd</sup> TIER SUBS & HAULERS

\* GOAL/COMMITMENT PROGRESS REPORT AMOUNT AND/OR RACE-NEUTRAL AMOUNT. DO NOT SUBTRACT NON-DBE SECOND-TIER SUBCONTRACTORS AND HAULERS FROM THIS COLUMN.

\*\* DBE SUBCONTRACTORS PAID TO NON-DBE SUBCONTRACTORS AND HAULERS.

THIS IS TO CERTIFY THAT \_\_\_\_\_% OF THE WORK WAS COMPLETED BY DISADVANTAGED BUSINESS ENTERPRISES AND/OR HISTORICALLY UNDERUTILIZED BUSINESSES AS STATED ABOVE.

BY: \_\_\_\_\_

NAME OF GENERAL CONTRACTOR

PER: \_\_\_\_\_

CONTRACTOR'S SIGNATURE

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
COUNTY

MY COMMISSION EXPIRES: \_\_\_\_\_



## EXHIBIT H

### FORM OF PERFORMANCE BOND

#### TXDOT STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM

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

WHEREAS, the Texas Department of Transportation ("**Obligee**"), has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("**Principal**"), a Comprehensive Development Agreement for the TxDOT Statewide Open -Road Toll Collection System, duly executed and delivered as of \_\_\_\_\_, 2005 (the "**Contract**"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract).

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("**Surety**"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ [**100% of the applicable Pilot System Price or Project Segment Price**] (the "**Bonded Sum**"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Obligee shall release this bond upon the occurrence of all of the conditions to release set forth in Section 8.1 of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for liquidated damages and warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the final completion of the design, construction and installation called for in the Contract Documents with respect to those obligations of Principal which survive such final completion.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the Contract;; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 6 in excess of the unpaid balance of the applicable **[insert "Pilot System" or "Project Segment", as applicable]** Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the applicable **[insert "Pilot System" or "Project Segment", as applicable]** Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

c. Liquidated Damages, Stipulated Damages and warranties under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond provided that the aggregate dollar amount of TxDOT-Directed Changes (as defined in the Contract), without the Surety's prior written consent thereto having been obtained, does not increase the **[insert "Pilot System" or "Project Segment", as applicable]** Price by more than \$\_\_\_\_\_ **[insert 10% of the Pilot System Price or Project Segment Price]**. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Agreement) for TxDOT-Directed Changes in excess of such amount. Surety waives notice of any alteration, modification, supplement or extension of time.

8. Correspondence or claims relating to this bond should be sent to Surety at the following address:

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

9. No right of action shall accrue on this bond to or for the use of any entity other than Obligatee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of \_\_\_\_\_, 200\_\_.

Principal:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

\_\_\_\_\_  
or secretary attest

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

**[To be replaced at award by actual bond]**

EXHIBIT H-1

FORM OF RIDER TO PERFORMANCE BOND

**TxDOT STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM**

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

THIS RIDER TO PERFORMANCE BOND is issued with reference to the Comprehensive Development Agreement for TxDOT Statewide Open-Road Toll Collection System between the Texas Department of Transportation ("**Obligee**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Principal**"), duly executed and delivered as of \_\_\_\_\_, 2005 (the "**Contract**").

Pursuant to the Contract, Principal and \_\_\_\_\_ ("**Surety**") duly executed and delivered to Obligee Performance Bond No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_\_\_, in the amount of the "Bonded Sum" described therein (the "**Bond**"). Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

Also pursuant to the Contract, Obligee and Principal have entered into a Project Segment Supplement, as contemplated by the Contract, dated as of \_\_\_\_\_, pursuant to which Principal has assumed under the Contract the additional obligations set forth in such Project Segment Supplement.

Prior to the issuance of NTP for the Work set forth in the Project Segment Supplement, Principal is required to furnish a Rider increasing the Bonded Sum by the **[insert "Pilot System Price" or "Project Segment Price", as applicable]** set forth in the Project Segment Supplement.

NOW, THEREFORE, Principal and Surety hereby agree that the Bonded Sum stated in the Bond is increased to the amount of \$\_\_\_\_\_, for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

Except for the increase in the amount of the Bonded Sum as provided herein, all terms and conditions of the Bond remain in full force and effect as originally therein set forth.

IN WITNESS WHEREOF, Principal and Surety have caused this RIDER TO PERFORMANCE BOND to be executed and delivered as of \_\_\_\_\_, 200\_\_.

Principal:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

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

Its: \_\_\_\_\_

(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

### SURETY

\_\_\_\_\_  
or secretary attest

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

Name

Title:

Address:

## EXHIBIT H-2

### FORM OF MAINTENANCE PERFORMANCE BOND

#### **TxDOT STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM**

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

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("Principal"), a Comprehensive Development Agreement for the TxDOT Statewide Open – Road Toll Collection System, duly executed and delivered as of \_\_\_\_\_, 2005 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, as a condition of Final Acceptance pursuant to the Contract, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents (as defined in the Contract) during the Maintenance Term.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ ***[insert 100% of the applicable 2 year aggregate Pilot System Maintenance Price or Project Segment Maintenance Price]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Obligee shall release this bond upon the occurrence of all of the conditions set forth in Section 8.1 of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for Stipulated Damages and warranties as specified in the Contract Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Term with respect to those obligations of Principal which survive such final completion.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Contract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the Contract;; or

b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligee the amount of damages as described in Paragraph 6 in excess of the unpaid balance of the applicable **[insert "Pilot System" or "Project Segment", as applicable]** Maintenance Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d, and the Obligee refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded



Sum, but subject to commitment of the unpaid balance of the applicable **[insert "Pilot System" or "Project Segment", as applicable]** Maintenance Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4; and

c. Stipulated Damages and warranties under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond provided that the aggregate dollar amount of TxDOT-Directed Changes (as defined in the Contract), without the Surety's prior written consent thereto having been obtained, does not increase the **[insert "Pilot System" or "Project Segment", as applicable]** Maintenance Price by more than \$\_\_\_\_\_ **[insert 10% of the aggregate 2 year Pilot System Maintenance Price or Project Segment Maintenance Price, as applicable]**. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Agreement) for TxDOT-Directed Changes in excess of such amount.

8. Correspondence or claims relating to this bond should be sent to Surety at the following address:

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

9. No right of action shall accrue on this bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of \_\_\_\_\_, 200\_\_.

Principal:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

\_\_\_\_\_  
or secretary attest

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

## EXHIBIT I

### FORM OF PAYMENT BOND

#### TxDOT STATEWIDE OPEN ROAD TOLL COLLECTION SYSTEM

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

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to \_\_\_\_\_, a \_\_\_\_\_ ("Principal"), a Comprehensive Development Agreement for the TxDOT Statewide Open-Road Toll Collection System, duly executed and delivered as of \_\_\_\_\_, 2005 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, Principal is required to furnish a bond guaranteeing payment of claims, subcontractors, suppliers, materialmen and mechanics.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ **[100% of the applicable Pilot System Price or Project Segment Price]** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall fail to pay any claims, subcontractors, suppliers, materialmen and mechanics with respect to the Work (as defined in the Contract), then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1 of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents (as defined in the Contract) are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond, provided that the aggregate dollar amount of TxDOT-Directed Changes (as defined in the Contract) without the Surety's prior written consent thereto having been obtained, does not increase the **[insert "Pilot System" or "Project Segment", as applicable]** Price (as defined in the Contract) by more than \$\_\_\_\_\_ **[insert 10% of Pilot System Price or Project Segment Price, as applicable]**. Surety waives notice of any alteration, modification, supplement or

extension of time other than Change Orders (as defined in the Contract) for TxDOT-Directed Changes in excess of such amount.

3. Correspondence or claims relating to this bond should be sent to Surety at the following address:

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

4. This bond shall inure to the benefit of the persons identified above so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of \_\_\_\_\_, 200\_\_.

Principal:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

**[To be replaced at award by actual bond]**

## EXHIBIT I – 1

### FORM OF RIDER TO PAYMENT BOND

#### TXDOT STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM

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

THIS RIDER TO PAYMENT BOND is issued with reference to the Comprehensive Development Agreement for TxDOT Statewide Open-Road Toll Collection System between the Texas Department of Transportation ("**Obligee**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Principal**"), duly executed and delivered as of \_\_\_\_\_, 2005 (the "**Contract**").

Pursuant to the Contract, Principal and \_\_\_\_\_ duly executed and delivered to Obligee Payment Bond No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_\_\_, in the amount of the Bonded Sum described therein (the "**Bond**"). Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

Also pursuant to the Contract, Obligee and Principal have entered into a Project Segment Supplement, as contemplated by the Contract, dated as of \_\_\_\_\_, pursuant to which Principal has assumed under the Contract the additional obligations set forth in such Project Segment Supplement.

Prior to issuance of the NTP for the Work set forth in the Project Segment Supplement, Principal is required to furnish a Rider increasing the Bonded Sum by the ***[insert "Pilot System Price" or "Project Segment Price" as applicable]*** set forth in the Project Segment Supplement.

NOW, THEREFORE, Principal and Surety hereby agree that the Bonded Sum stated in the Bond is increased to the amount of \$\_\_\_\_\_, for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

Except for the increase in the amount of the Bonded Sum as provided herein, all terms and conditions of the Bond mean in full force and effect as originally therein set forth.

IN WITNESS WHEREOF, Principal and Surety have caused this RIDER  
TO PAYMENT BOND to be executed and delivered as of \_\_\_\_\_, 200\_.

Principal:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

**SURETY**

\_\_\_\_\_  
or secretary attest

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

EXHIBIT I – 2

FORM OF MAINTENANCE PAYMENT BOND

**TxDOT STATEWIDE OPEN ROAD TOLL COLLECTION SYSTEM**

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

WHEREAS, the Texas Department of Transportation (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Comprehensive Development Agreement for the TxDOT Statewide Open-Road Toll Collection System, duly executed and delivered as of \_\_\_\_\_, 2005 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, as a condition of Final Acceptance pursuant to the Contract, Principal is required to furnish a bond guaranteeing payment of claims, subcontractors, suppliers, materialmen and mechanics.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$\_\_\_\_\_ **[100% of the applicable 2 year aggregate Pilot System Maintenance Price or Project Segment Maintenance Price]** (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall fail to pay any claims, subcontractors, suppliers, materialmen and mechanics with respect to the Work (as defined in the Contract), then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1 of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents (as defined in the Contract) are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond provided that the aggregate dollar amount of TxDOT-Directed Changes (as defined in the Contract), without the Surety's prior written consent thereto having been obtained, does not increase the **[insert “Pilot System” or “Project Segment”, as applicable]** Maintenance Price by more than \$\_\_\_\_\_ **[insert 10% of the aggregate 2 year Pilot System Maintenance Price or Project Segment Maintenance Price, as applicable]**. Surety waives notice of any alteration,

modification, supplement or extension of time other than Change Orders (as defined in the Contract) for TxDOT-Directed Changes in excess of such amount. Surety waives notice of any alteration, modification, supplement or extension of time.

3. Correspondence or claims relating to this bond should be sent to Surety at the following address:

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

4. This bond shall inure to the benefit of the persons identified above so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of \_\_\_\_\_, 200\_.

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]



EXHIBIT J

FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # \_\_\_\_\_

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

month/day/year

Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, TX 78761

Entry Required in Cell"

Draw Request for Work performed for the period:

month/day/year

to

month/day/year

Original Contract Price	
Approved Change Order Amounts	
Revised Contract Price	\$0.00
Cumulative Price Earned to Date	
Cumulative Amount of Previous Draw Requests	
Amount Qualified for Payment this Period (Milestones Achieved)	\$0.00
Cumulative Amount of Previous Retainage (5% of Cumulative Amount of Previous Draw Requests)	\$0.00
Retainage Percentage this Draw Request (5% of Amount Qualified for Payment this Period)	\$0.00
Current Amount Due (Amount Qualified for Payment this Period less Retainage Percentage this Draw Request	\$0.00

Milestones Achieved and Covered Under This Draw Request: (list):

Milestones Achieved and Covered Under Prior Draw Requests (list):

Printed Name Developer's Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 2 of 2 for Draw Request Checklist)

## DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- ☐ Monthly progress report as described in Section 7 of the Technical Provisions
- ☐ Description of the status of all completed Milestones ☐ Certifications by the Engineering Professional Services Quality Review Manager, Toll Systems Quality Review Manager and the Construction Quality Acceptance Manager;
- ☐ Report of personnel hours since the prior Draw Request (including a list setting forth all Key Personnel and the hours which they worked during this period);
- ☐ Draw Request data sheet(s) and documents that support and substantiate the amount requested based upon completion of Milestones;
- ☐ DBE utilization reports;
- ☐ An approved and updated Project Schedule.

### NOTE – following for information only

Draw Request, Developer shall submit a certificate in a form approved by TxDOT and signed and sealed by the Engineering Professional Services Quality Review Manager, the Toll Systems Quality Review Manager and Construction Quality Acceptance Manager, certifying that:

- ♦ Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, Suppliers and Fabricators, which is the subject of the Draw Request has been checked and/or inspected by the PSQRM (with respect to Engineering Professional Services), the TSSQRM (with respect to Toll System Services) and the CQAM (with respect to construction Work);
- ♦ Except as specifically noted in the certification, all Work which is the subject of the Draw Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law;
- ♦ The PSQP, TSSQCP and the CQP and all of the measures and procedures provided therein are functioning properly and are being followed; and

- ♦ The Engineering Professional Services percentages, the Toll System Services percentages and construction percentages indicated are accurate and correct.

**EXHIBIT K**  
**FORM OF CHANGE ORDER**

CHANGE ORDER PROPOSAL NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

**SECTION I**

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

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

Contract No: \_\_\_\_\_

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

**DESCRIPTION:**

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**SCOPE:**

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**CAUSE OF CHANGE ORDER REQUEST:**

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\_\_\_\_\_  
**Developer Project Manager                      Date**

**[if a Guarantor is required under the CDA, insert the below]**

Acknowledged, approved and consented to by:

**Guarantor:**

\_\_\_\_\_

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

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

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

**CHANGE ORDER  
REQUEST**

**CHANGE ORDER PROPOSAL NO.** \_\_\_\_\_ **CONTRACT NO.** \_\_\_\_\_

**SECTION II**

The total amount of this Change Order is \$ \_\_\_\_\_. Documentation supporting the Change Order is attached as Exhibits \_\_\_\_\_ through \_\_\_\_\_.

**Payment Schedule Items Added/Deducted:**

<u>Activity No.</u>	<u>Description</u>	<u>Amount</u>
_____	_____	_____

This Change Order Request is for (check the applicable categories below):

- \_\_\_\_\_ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- \_\_\_\_\_ A unit price/quantities Change Order (provide information in Section IIB below)
- \_\_\_\_\_ A Time and Materials Change Order (provide information in Section IIC below)
- \_\_\_\_\_ A Change Order that includes some or all of the above elements (provide information in Section IIA, IIB, IIC as applicable)

**Section IIA**

Lump sum price is \$ \_\_\_\_\_

**Section IIB**

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: \$ \_\_\_\_\_

## Section IIC

### Summary of Change Order Proposal by Categories: [Additives/(Credits)]

A.	Developer Labor (civil construction)	
1.	Wages <sup>1</sup>	\$ _____
2.	Labor benefits <sup>2</sup> (Lesser of (i) actual cost of labor benefits or (ii) 55% of A.1)	\$ _____
B.	Developer and Subcontractor Labor (engineering professional services)	
1.	Wages (Raw)	\$ _____
2.	Labor benefits <sup>1</sup> (25% of B.1, which includes overhead and profit)	\$ _____
3.	Off-duty peace officers and patrol cruisers <sup>1</sup>	\$ _____
C.	Developer and Subcontractor Labor (toll systems services)	
1.	Wages (Raw)	\$ _____
2.	Labor benefits. (25% of C.1, which includes overhead and profits)	\$ _____
D.	Materials (with taxes, freight and discounts)	\$ _____
E.	Equipment <sup>2</sup>	\$ _____
F.	Subcontracts (Time and Materials cost)	\$ _____
G.	Utility Direct Costs	\$ _____
H.	Overhead and Profit	
1.	Labor (25% of A.1)	\$ _____
2.	Traffic Control (5% of B.3)	\$ _____
3.	Materials (25% of C)	\$ _____
4.	Subcontracts (5% of E)	\$ _____
5.	Utility Direct Costs (5% of F)	\$ _____
6.	Equipment (5% of E)	\$ _____
I.	Grand Total	\$ _____

<sup>1</sup> Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes. <sup>2</sup> Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 13.7.3 of the CDA.



## CHANGE ORDER REQUEST

CHANGE ORDER PROPOSAL NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

### SECTION III [For changes prior to Final Acceptance]

The status of System Acceptance is as follows:

- ☐ Unaffected by this Change Order Proposal
- ☐ Affected by (increasing) (decreasing) the date of System Acceptance by \_\_\_\_\_ calendar days.
- ☐ Affected by (increasing) (decreasing) the \_\_\_\_\_ Float by \_\_\_\_\_ calendar days.

The status of Punch List Acceptance is as follows:

- ☐ Unaffected by this Change Order Proposal
- ☐ Affected by (increasing) (decreasing) the date of System Acceptance by \_\_\_\_\_ calendar days.
- ☐ Affected by (increasing) (decreasing) the \_\_\_\_\_ Float by \_\_\_\_\_ calendar days.

The status of Final Acceptance is as follows:

- ☐ Unaffected by this Change Order Proposal
- ☐ Affected by (increasing) (decreasing) the date of Final Acceptance by \_\_\_\_\_ calendar days.
- ☐ Affected by (increasing) (decreasing) the \_\_\_\_\_ Float by \_\_\_\_\_ calendar days.

Accordingly, the summary of the dates of System Acceptance, Punch List Acceptance and Final Acceptance and Float are as follows:

1. System Acceptance: \_\_\_\_\_  
(+ or - \_\_\_\_\_ days from base of \_\_\_\_\_ calendar days after NTP)
2. Punch List Acceptance: \_\_\_\_\_  
(+ or - \_\_\_\_\_ days from base of \_\_\_\_\_ calendar days after NTP)
3. Final Acceptance: \_\_\_\_\_  
(+ or - \_\_\_\_\_ days from base of \_\_\_\_\_ calendar days after NTP)
4. Number of days of Project Float \_\_\_\_\_

Justification for Change Order with reference to CDA:

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**CHANGE ORDER  
REQUEST**

**CHANGE ORDER PROPOSAL NO.** \_\_\_\_\_ **CONTRACT NO.** \_\_\_\_\_

**SECTION IV [For changes after Final Acceptance]**

Justification for Change Order with reference to CDA:

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**The above four sections represent a true and complete summary of all aspects of this change.**

This Change Order Proposal includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event, occurrence or matter giving rise to the proposed change.

**CHANGE ORDER  
REQUEST**

CHANGE ORDER PROPOSAL NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

**If the foregoing Change Order Proposal includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.**

\_\_\_\_\_  
Developer Project Manager

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

**CHANGE ORDER  
REQUEST**

**CHANGE ORDER PROPOSAL NO.** \_\_\_\_\_ **CONTRACT NO.** \_\_\_\_\_

**SECTION IV (Reviewed by Project Manager)**

\_\_\_\_\_  
**Project Manager (CDA)**

\_\_\_\_\_  
**Date**

**Comments:**

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

CHANGE ORDER  
REQUEST

CHANGE ORDER PROPOSAL NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

SECTION V (Reviewed by TxDOT Project Director)

\_\_\_\_\_  
TxDOT Project Director

Date \_\_\_\_\_

Comments:

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

**CHANGE ORDER  
REQUEST**

CHANGE ORDER PROPOSAL NO. \_\_\_\_\_ CONTRACT NO. \_\_\_\_\_

**SECTION VI (Reviewed by FHWA Project Representative)(if applicable)**

Date

\_\_\_\_\_  
FHWA Project Representative

Comments:

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

**CHANGE ORDER  
REQUEST**

**CHANGE ORDER PROPOSAL NO.** \_\_\_\_\_ **CONTRACT NO.** \_\_\_\_\_

**SECTION VII (Approval by TxDOT District Engineer and Deputy Director)**

<hr/>	<hr/>
TxDOT District Engineer	Date

<hr/>	<hr/>
TxDOT Deputy Director	Date

**Comments:**

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## EXHIBIT L

### INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

#### TxDOT Representatives:

- David Powell
- Additional representatives designated in writing by David Powell or the TTA Division Director for specific matters

#### Developer Representative:

- Victor Jordan
- Additional representatives designated in writing by Victor Jordan for specific matters



## **EXHIBIT M**

### **DISPUTE RESOLUTION PROCEDURES**

#### **Relevant Statutory Provisions**

Sec. 201.112. **CONTRACT CLAIMS.** (a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

- (1) Section 22.018;
- (2) Chapter 223;
- (3) Chapter 361; or
- (4) Chapter 2254, Government Code.

(b) If a person with a claim is dissatisfied with the department's resolution of the claim under the procedures authorized under Subsection (a), the person may request a formal administrative hearing to resolve the claim under Chapter 2001, Government Code.

(c) An administrative law judge's proposal for decision rendered under Chapter 2001, Government Code, shall be submitted to the director for adoption. Notwithstanding any law to the contrary, the director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The director shall provide a written statement containing the reason and legal basis for a change made under this subsection.

(d) The director's final order is subject to judicial review under Chapter 2001, Government Code, under the substantial evidence rule.

(e) This section does not waive state immunity from liability.

#### **Contested Case Provisions in Administrative Procedure Act:**

<http://www.capitol.state.tx.us/statutes/go/go0200100toc.html>

## **Relevant Rule Provisions**

### **§9.2. Contract Claim Procedure.**

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

(1) Commission--The three member body appointed by the governor to compose the Texas Transportation Commission.

(2) Committee--The Contract Claim Committee.

(3) Contract claim--A claim for additional compensation, time extension, or any other reason, arising out of a contract between the State of Texas, acting in its own capacity or as an agent of a local government, and a contractor, which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Section 22.018, Section 391.091, Chapter 223, Chapter 361, or Government Code, Chapter 2254, Subchapters A and B.

(4) Contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the State of Texas which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Section 22.018, Section 391.091, Chapter 223, Chapter 361, or Government Code, Chapter 2254, Subchapters A and B.

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

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

(7) Department office director--The chief administrative officer of the responsible department office, such officer to be a district engineer, division director, or office director.

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

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

(b) Contract claim committee.

(1) The executive director will name the members and chairman of a contract claim committee or committees to serve at his or her pleasure. The chairman may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the contractor involved in the contract claim. It will be the responsibility of a committee to gather information, study, and meet informally with contractors, if requested, to resolve

any disputes that may exist between the department office and the contractor, and which result in one or more contract claims.

(2) The commission stresses that, to every extent possible, disputes between a contractor and the engineer or other department employee in charge of a project should be resolved during the course of the contract. If, however, after completion of a contract, or when required for orderly performance prior to completion, resolution of a contract claim is not reached with the department office, the contractor may file a detailed report and contract claim request with the department office director under whose administration the contract was or is being performed, the department's Construction Division, or the committee. Documents filed with the office director or the Construction Division will be transmitted to the committee.

(3) The committee will secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee.

(4) The committee will then afford the contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the contractor an opportunity to present relevant information and respond to information the committee has received from the department office.

(5) The committee chairman will give written notice of the committee's proposed disposition of the claim to the contractor. If that disposition is acceptable, the contractor shall advise the committee chairman in writing within 20 days of the date such notice is received, and the chairman will forward to the commission an agreed disposition involving payment to the contractor, for a final and binding order on the claim. If the contractor is dissatisfied with the proposal of the committee, the contractor may petition the executive director for a formal administrative hearing to litigate the claim pursuant to the provisions of §§1.21 et seq. of this title (relating to Contested Case Procedure).

(6) Proceedings before the department office director or the committee are in the nature of an attempt to mutually resolve a contract claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in paragraph (5) of this subsection. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a contract claim are part of the attempt to mutually resolve a contract claim without litigation, and are also not admissible for any purpose in a formal administrative hearing provided in paragraph (5) of this subsection.

(7) The administrative law judge's proposal for decision in a formal administrative hearing provided in paragraph (5) of this subsection shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(8) If the contractor fails to submit the petition within 20 days after notice of the committee's recommendation is received, that recommendation will be final, and all further appeal by the contractor shall be barred.

## **SUBCHAPTER E. PROCEDURES IN CONTESTED CASES**

### **§1.21. Scope and Purpose.**

The sections in this subchapter describe the procedures to be followed in contested cases arising under Government Code, Chapter 2001, with the exception of contested cases arising under the Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36), or under Transportation Code, Chapter 503, which are governed by 16 TAC Chapter 111. Except as provided in this subchapter, all contested cases shall be governed by the procedural rules of the State Office of Administrative Hearings.

### **§1.22. Definitions.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Administrative Law Judge**--A person appointed by the State Office of Administrative Hearings to conduct a hearing on matters within the department's jurisdiction.

(2) **Contract claim**--Any claim arising under a contract governed by Transportation Code, §22.018, by Transportation Code, Chapter 223, or by Government Code, Chapter 2254.

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

(4) **Executive director**--The chief administrative officer of the department or, if permitted by law, the director's designee.

(5) **Party**--The department or a person named or permitted to participate in a contested case.

(6) **Person**--An individual, representative, partnership, corporation, association, governmental subdivision, or public or private organization, or any other entity, other than the department.

(7) **Petition**--The document that initiates a contested case.

(8) **Petitioner**--A person that files a petition.

### **§1.23. Filing of Petition.**

A person may seek to initiate a contested case by filing an original and four copies of a petition with the executive director at the department's headquarters building in Austin.

### **§1.24. Content of Petition.**

- (a) A petition must include the following:
  - (1) the name of the petitioner;
  - (2) the names of all other known persons with an interest in the outcome of the contested case;
  - (3) a concise statement of the facts on which the petitioner relies;
  - (4) a statement of the relief demanded by the petitioner;
  - (5) any other matter required by statute; and
  - (6) the signature of the petitioner or the petitioner's authorized representative.
- (b) No document including a settlement offer by the department may be enclosed with the petition, and the petition may not refer to the substance of a settlement offer made by the department.
- (c) If the petition concerns a contract claim, a copy of the detailed report and request filed under §9.2(b)(2) of this title (relating to Contract Claim Procedure) must be enclosed with the petition, and the petition must state the date on which the petitioner received written notice of the proposed disposition by the contract claim committee under §9.2(b)(5) of this title. The petition and its attachments may not otherwise refer to the proposed disposition and may not include a copy of the written notice of the proposed disposition.

### **§1.25. Examination by Executive Director.**

- (a) The executive director will examine a petition and make a preliminary determination whether the petition states a claim that entitles the petitioner to initiate a contested case and whether the petition meets the procedural requirements of §1.23 and §1.24 of this subchapter and of Government Code, Chapter 2001.
- (b) If the executive director finds that the petition does not meet all legal requirements, the executive director will return the petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner will be given at least 10 days in which to file a corrected petition.

(c) If a corrected petition is rejected under this section, the executive director will return the corrected petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner will not be given an opportunity to file another corrected petition.

(d) The executive director's preliminary determination of a petition's legal sufficiency is without prejudice to the department's right to assert in litigation that a contested case should be dismissed for any reason.

#### **§1.26. Initiation of Contested Cases.**

(a) If the executive director finds that a petition meets all legal requirements, the department will initiate a contested case in accordance with the rules of the State Office of Administrative Hearings.

(b) The department may initiate a contested case on its own initiative in accordance with the rules of the State Office of Administrative Hearings. Service of the Notice of Hearing shall be accomplished by certified or registered mail to the party's last known address as shown in the department's records.

#### **§1.27. Discovery.**

(a) Commissions to take depositions. At the written request of a party, the executive director will issue a written commission directed to officers authorized by statute to take a deposition of a witness.

(b) Subpoenas for the production of documents. At the verified written request of a party, the executive director will issue a subpoena for the production of documents. The written request must identify the documents with as much detail as possible and must include a statement of their relevance to the issues in the case.

(c) Subpoenas for attendance at hearings. At the written request of a party, the executive director will issue a subpoena for the attendance of a witness at a hearing in a contested case. The subpoena may be directed to any person within the department's jurisdiction, without regard to the distance between the location of the witness and the location of the hearing.

(d) Limits on discovery. A commission or subpoena will only be issued on a showing of good cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears that it is sought for the purpose of harassment or if it would unduly inconvenience the person to whom it is directed. Issuance of a commission or subpoena will be subject to the provisions of Government Code, Chapter 2001, and the rules of the State Office of Administrative Hearings.

### **§1.28. Evidence.**

The admissibility of evidence in a contested case shall be governed by Government Code, Chapter 2001, and by the rules of the State Office of Administrative Hearings, except that a settlement offer, including any reference to a proceeding conducted under §9.2 of this title (relating to Contract Claim Procedure), shall not be admissible for any purpose.

### **§1.29. Withdrawal or Amendment of Proposal for Decision.**

The administrative law judge may withdraw or amend a proposal for decision at any time before a final order is issued.

### **§1.30. Filing of Exceptions and Replies.**

(a) A party may file exceptions to an administrative law judge's proposal for decision no more than 20 days after service of the proposal for decision. A reply to exceptions must be filed no more than 15 days after the filing of the exceptions.

(b) Exceptions and replies to exceptions must be filed with the executive director at the department's headquarters building in Austin. Copies must be filed simultaneously with the administrative law judge.

(c) A request for an extension of time in which to file exceptions or a reply must be filed with the executive director no later than three days before the date sought to be extended. The request must be served on all parties by facsimile or hand delivery on the date on which it is filed, or if that is not feasible, by overnight delivery service. A request for an extension of time will be granted only in extraordinary circumstances when it is necessary in the interest of justice.

### **§1.31. Form of Exceptions and Replies.**

Exceptions and replies must conform to the following standards.

(1) Exceptions and replies must be typewritten or printed on paper 8-1/2 inches wide by 11 inches long with an inside margin at least one inch wide. Reproductions are acceptable if all copies are legible.

(2) Exceptions and replies must contain:

- (A) the names of all parties;
- (B) a concise statement of the facts and law on which the submitting party relies;
- (C) a statement of the relief desired;
- (D) a certificate of service;

(E) the signature of the submitting party or the submitting party's authorized representative; and

(F) any other matter required by statute.

(3) Each specific exception must be separately numbered, separately set forth, and concisely stated, and it must incorporate all facts and law relating to that specific exception.

#### **§1.32. Motions for rehearing.**

(a) A party may file a motion for rehearing no more than 20 days after service of the final order. A reply to a motion for rehearing must be filed no more than 15 days after the filing of the motion.

(b) A request for an extension of time in which to file a motion for rehearing will not be granted.

(c) A motion for rehearing must conform to the standards for exceptions and replies set forth in §1.31 of this subchapter.

#### **§1.33. Extension of time for final order.**

When the administrative law judge determines that a final order cannot reasonably be issued within 60 days after the date on which the hearing is finally closed, the administrative law judge shall announce at the conclusion of the hearing that the time for a final order will be extended. The proposal for decision shall include a reference to the announced extension. The extension shall be for a period extending at least 45 days after the issuance of the proposal for decision to ensure enough time for the filing of exceptions and replies. A longer extension shall be granted in matters of unusual complexity.



## EXHIBIT N

### LIST OF REFERENCE DOCUMENTS

#### XVI. Table of Contents

<b>Loop 49 CD:</b>	05-04-08 sortc info used for eval lp 49 as pilot.pdf 05-04-08 lp 49 plans.pdf 05-04-08 lp 49 final env impact statement.pdf		
<b>TCB/AECOM:</b> Lp 1604 (Green Mtn to IH35) Bexar County	30 Percent plans.pdf		
<b>TxDOT-Toll Starter System:</b> San Antonio District	EA for US281N_0253 04-114 REE.pdf EA for Lp1604N_3452-02-074etc_REE.pdf Corridor-feasibility-analysis (T&R).pdf <u>US281 ROW</u> <u>Schematic</u> <u>1604-STRIPING-PDF</u>		
<u>US281 ROW:</u> SAT025304AA_06.pdf SAT025304AA_07.pdf SAT025304AA_08.pdf SAT025304AA_09.pdf SAT025304AA_30.pdf SAT025304AA_31.pdf SAT025304AA_32.pdf SAT025304AA_33.pdf SAT025304AA_34.pdf SAT025304AA_35.pdf SAT025304AA_36.pdf SAT025304AA_37.pdf SAT025304AA_38.pdf SAT025304AE_04.pdf SAT025304AE_05.pdf	<u>Schematic:</u> Toll Lanes Schematic_ih10.dgn Toll Lanes Schematic_lp1604.dgn Toll Lanes Schematic_us281.dgn	<u>1604-STRIPING-PDF</u> SCM 1604-WIDENu-GRID SCM 1604-WIDENv-GRID SCM 1604-WIDENw-GRID SCM 1604-WIDENx-GRID SCM 1604-WIDENy-GRID SCM 1604-WIDENZ-GRID	

**Loop 1604:**

FM 1535 (NW Military)  
to Stone Oak Pkwy  
Roadway Files, Utility Files &  
Ret. Wall/Bridge/Ramp Files

**Roadway Files****Utilities**

Gantry locations.pdf  
Ret. Walls & Bridges.pdf

**Roadway Files:**

det-rdwy-01-000.pdf  
det-rdwy-02-000.pdf  
det-rdwy-03-000.pdf  
det-rdwy-04-000.pdf  
det-rdwy-05-000.pdf  
det-rdwy-06-000.pdf  
Index of Files.doc  
pln-01-000.pdf  
pln-02-000.pdf  
pln-03-000.pdf  
pln-04-000.pdf  
pln-05-000.pdf  
pln-06-000.pdf  
pln-07-000.pdf  
pln-08-000.pdf  
pln-09-000.pdf  
pln-10-000.pdf  
pln-11-000.pdf  
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pln-24-000.pdf  
pln-25-000.pdf  
ppint\_bitters-000.pdf  
ppint\_bittersprof-000.pdf  
ppint\_bittersprof1-000.pdf  
ppint\_bittersprof2-000.pdf  
ppint\_bittersprof1-000.pdf  
ppint\_bittersprof2-000.pdf

ppint\_blancon-000.pdf  
ppint\_blanco-000.pdf  
ppint\_huebn-000.pdf  
ppint\_huebprof1-000.pdf  
ppint\_huebprof2-000.pdf  
ppint\_huebprof1-000.pdf  
ppint\_huebprof2-000.pdf  
ppint\_huebs-000.pdf  
ppint\_military\_ebta1-000.pdf  
ppint\_military\_ebta2-000.pdf  
ppint\_military\_ebta3-000.pdf  
ppint\_military\_ebta4-000.pdf  
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ppint\_military\_wbta6-000.pdf  
ppint\_militarys-000.pdf  
ppint\_milprof1-000.pdf  
ppint\_milprof2-000.pdf  
ppint\_rogers-000.pdf  
pprmpa-01-000.pdf  
pprmpa-02-000.pdf  
pprmpb-01-000.pdf  
pprmpb-02-000.pdf  
pprmpc-01-000.pdf  
pprmpc-02-000.pdf  
pprmpd-01-000.pdf  
pprmpd-02-000.pdf  
pprmp1-01-000.pdf  
pprmp1-02-000.pdf  
pprmp2-01-000.pdf  
pprmp2-02-000.pdf  
pprmp3-01-000.pdf  
pprmp3-02-000.pdf

pprmp4-01-000.pdf  
pprmp4-02-000.pdf  
pprmp5-01-000.pdf  
pprmp5-02-000.pdf  
pprmp6-01-000.pdf  
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prf-ml-15-000.pdf  
prf-ml-16-000.pdf  
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prf-ml-23-000.pdf  
prf-ml-24-000.pdf  
prf-ml-25-000.pdf

Utilities:

utl-ex01-000.pdf  
utl-ex02-000.pdf  
utl-ex03-000.pdf  
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utl-ex06-000.pdf  
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utl-ex22-000.pdf  
utl-ex23-000.pdf  
utl-ex24-000.pdf  
utl-ex25-000.pdf

**TCB/AECOM:**

US 281 North  
Bexar County

Traffic.Scan.pdf  
TCP.pdf  
SW3P Scan.pdf  
Roadway.Scan.pdf  
Ret.Walls.Scan.pdf  
JB.Utilities.Scan.pdf  
General.pdf  
Drainage.Scan.pdf  
Bridge.Scan.pdf

**HDR:**

Preliminary Signing Schematic  
IH-10  
LP 1604  
US 281

US 281 Signing Schematic.dgn  
LP 1604 Signing Schematic.dgn  
IH 10 Signing Schematic.dgn

**Loop 49-Plans Online:**

Smith County

USERMANUAL.pdf  
TYL0403.ald  
SEARCH.exe  
README.txt  
CDSETUP.exe  
TYL0403  
ALCHEMY

**Toll Feasibility Reports:**

Tyler Lp 49 (TYL 203)  
San Antonio Lp 1604  
& US 281 (SAT 216)

TYL203.pdf

SAT216 US281 North-Loop 1604 E&W Corridor TTA Final  
Submittal\_081104\_rev.pdf

**HDR:**

US 281 at LP 1604  
Interchange and Approaches  
60% QA/QC

Bridge.pdf

DRAINAGE.PDF.pdf

RDWY.PDF.pdf

TCP.PDF.pdf

TITLE-SUMM.PDF.pdf

TRAFFIC-SW3P.PDF.pdf

**HDR:**

US 281 at LP 1604  
Interchange and Approaches  
60% QA/QC

Bridge.pdf

DRAINAGE.PDF.pdf

RDWY.PDF.pdf

TCP.PDF.pdf

TITLE-SUMM.PDF.pdf

TRAFFIC-SW3P.PDF.pdf

**Loop 49 W&S:**

SCS-Schematic Cut Sheets  
SLD-Schematic Line Diagrams  
See \*index.txt.

lp49-sld; s; w; sld-index.txt

lp49-scs; s; w; scs-index.txt

**lp49-sld; s:**

Baselines.dgn

ContoursatFM756.dgn

49planview.dgn

49profileview.dgn

69intersection.dgn

756align.dgn

756base.dgn

756plan.dgn

756pro.dgn

756ramps.dgn

exist69intersection.dgn

FM756.dgn

lp49alg.dgn

lp49cont.dgn

lp49cstlimits.dgn

lp49dran.dgn

lp49eop.dgn

LP49RDWYs.dgn

lp49row.dgn

lp49schem.dgn

lp49shap.dgn

lp49spm.dgn

MAP22D.ddn

MAP32D.dgn

newFM756.dgn

pock032003.dgn

prop69ramps.dgn

shackbz5skw.dgn

shackprfl5skw.dgn

spans5.dgn

lp49-sld; w:

49prof02.dgn  
108AREA1.dgn  
108AREA2.dgn  
108CNTY.dgn  
108BURBAN.dgn  
212AREA.dgn  
212BASE.dgn  
212CNTY.dgn  
5120AL01.dgn  
5120AL02.dgn  
5120align.dgn  
5120base0.dgn  
5120BASE1.dgn  
5120BASE2.dgn  
5120ih20.dgn  
5120OVLV.dgn

5120PATT.dgn  
5120STRI.dgn  
CORRIDOR.dgn  
FPLAN.dgn  
lp49alg.dgn  
LP49RDWYs.dgn  
lp49row.dgn  
MAP01C.dgn  
MAP02C.dgn  
MAP03C.dgn  
MAP04C.dgn  
MAP05C.dgn  
MAP06C.dgn  
MAP07C.dgn  
MAP012D.dgn  
MAP022D.dgn

MAP032D.dgn  
MAP042D.dgn  
MAP052D.dgn  
MAP062D.dgn  
MAP072D.dgn  
NEWOVL.dgn  
PROP1.dgn  
PROP2.dgn  
PROP.dgn  
PROPSCH1.dgn  
PROPSCH2.dgn  
smithmap3.dgn

lp49-scs; s:

369.dgn  
ALIGN49.dgn  
BDRSCH65.dgn  
BDRUS69.dgn  
LP49CL83.dgn  
LP49RDWY.dgn  
LP49SA.map  
LP49SB.map  
LP49SD01.dgn  
LP49SD02.dgn  
LP49SD03.dgn  
LP49SD04.dgn  
LP49SD05.dgn  
LP49SD06.dgn  
LP49SD07.dgn  
LP49SD08.dgn  
LP49SD09.dgn  
LP49SD10.dgn

LP49SD11.dgn  
LP49SD12.dgn  
LP49SD13.dgn  
MAP12D.dgn  
MAP22D.dgn  
MAP32D.dgn  
MAP42D.dgn  
mlngl.dgn  
PRO.dgn  
PR1.dgn  
PR2.dgn  
PR3.dgn  
US69MAP.dgn

lp49-scs; w:

49wmls01.dgn  
49wmls02.dgn  
49wmls03.dgn  
49wmls04.dgn  
49wmls05.dgn  
49wmls06.dgn  
49wmls07.dgn  
49wmls08.dgn  
49wmls09.dgn  
49wmls10.dgn  
49wmls11.dgn  
49wmls12.dgn  
49wmls13.dgn  
5120AL01.dgn  
5120AL02.dgn  
5120BASE.dgn  
5120MLPR.dgn  
5120ovl.dgn  
5120OVL.dgn  
5120STRI.dgn  
bdrih20.dgn  
BDRSCH65.dgn  
IH20PROF.dgn  
Lp49ih20.dgn  
LP49RDWY.dgn

MAP01C.dgn  
MAP02C.dgn  
MAP03C.dgn  
MAP04C.dgn  
MAP05C.dgn  
MAP06C.dgn  
MAP07C.dgn  
MAP012D.dgn  
MAP022D.dgn  
MAP032D.dgn  
MAP042D.dgn  
MAP052D.dgn  
MAP062D.dgn  
MAP072D.dgn  
PROP1.dgn  
PROP2.dgn  
PROPSCH1.dgn  
PROPSCH2.dgn  
smithmap2.dgn  
smithmap3.dgn  
smithmap4.dgn

## EXHIBIT O

### FORM OF WARRANTY BOND

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

**KNOW ALL PERSONS BY THESE PRESENTS**, that \_\_\_\_\_, a \_\_\_\_\_, as "Principal" and \_\_\_\_\_, a \_\_\_\_\_ (the "Surety"), having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation, as "Obligee", in the sum of \$ \_\_\_\_\_ **[insert 20% of Pilot System Price or Project Segment Price, as applicable]** (the "Bonded Sum"), for the payment whereof Principal and Surety bind themselves, and their heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee, has awarded to Principal, a comprehensive development agreement for the Texas Statewide Open-Road Toll Collection System, dated \_\_\_\_\_, 2005 (the "Contract"), on the terms and conditions set forth therein; and

WHEREAS, as a condition to Final Acceptance (as defined in the Contract), Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents after Final Acceptance, including payment of claims, subcontractors, suppliers, materialmen and mechanics, as a condition to release of the Performance Bond and Payment Bond by Obligee.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, as they may be amended or supplemented, including without limitation the fulfillment of all Warranties, and payment of claims, subcontractors, suppliers, materialmen and mechanics, then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the Bonded Sum.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This bond shall inure to the benefit of all subcontractors, suppliers, materialmen and mechanics with respect to the Work, other than entities having an equity interest in Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

3. The guarantees contained herein shall survive the Final Acceptance called for in the Contract Documents.

4. Whenever Principal shall fail to pay the lawful claims of any of the persons identified in item 2 above with respect to the Work, excluding entities having an equity interest in Principal, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

5. Whenever Principal shall be, and is declared by the Obligor to be, in default with respect to its obligations under the Contract Documents, provided that the Obligor is not then in material default thereunder, Surety shall promptly take one of the following actions with the consent of the Obligor:

- a. arrange for Principal to perform and complete the Contract;
- b. complete the Work in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors;
- c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligor for a contract for performance and completion of the Work (as defined in the Contract), through a procurement process approved by the Obligor, arrange for a contract to be prepared for execution by the Obligor and the contractor selected with the Obligor's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Obligor the amount of damages as described in Paragraph 7 in excess of the unpaid balance of the **[insert "Pilot System" or "Project Segment", as applicable]** Price incurred by the Obligor resulting from the Principal's default; or
- d. waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the Obligor and, as soon as practicable after the amount is determined, tender payment therefore to the Obligor, or (ii) deny liability in whole or in part and notify the Obligor citing reasons therefore.

6. If Surety does not proceed as provided in Paragraph 5 with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligor to Surety demanding that Surety perform its obligations under this Bond, and the Obligor shall be entitled to enforce any remedy available to the Obligor. If Surety proceeds as provided in Subparagraph 5.d, and the Obligor refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligor shall be entitled to enforce any remedy available to the Obligor.

7. After the Obligor has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligor shall not be greater than those of the



Principal under the Contract, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the **[insert "Pilot System" or "Project Segment", as applicable]** Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5; and

c. Liquidated Damages and Stipulated Damages under the Contract.

8. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond, provided that the aggregate dollar amount of TxDOT-Directed Changes (as defined in the Contract), without the Sureties' prior written consent thereto having been obtained, does not increase the \_\_\_\_\_ **[insert "Pilot System" or "Project Segment", as applicable]** Price by more than \$\_\_\_\_\_ **[insert 10% of the Pilot System Price or Project Segment Price, as applicable]**. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders (as defined in the Contract) for TxDOT-Directed Changes in excess of such amount.

9. Correspondence or claims relating to this bond should be sent to Surety at the following address:

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

10. Initially capitalized terms not otherwise defined herein shall have the definitions set forth in Exhibit A of the Contract

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of \_\_\_\_\_, 200\_\_.

Principal:

\_\_\_\_\_

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

Its: \_\_\_\_\_

(Seal)

Surety:

\_\_\_\_\_

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

Its: Attorney-in-Fact

(Seal)

[ADD APPROPRIATE ACKNOWLEDGMENTS]

**EXHIBIT P**  
**FORM OF PROJECT SEGMENT SUPPLEMENT**  
**COMPREHENSIVE DEVELOPMENT AGREEMENT**  
**TxDOT STATEWIDE OPEN-ROAD TOLL COLLECTION SYSTEM**  
**PROJECT SEGMENT SUPPLEMENT**

**Project Segment No.** \_\_\_\_\_

**Location:** \_\_\_\_\_

This Project Segment Supplement ("Supplement") is made between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and \_\_\_\_\_, a \_\_\_\_\_ ("Developer"), effective as of \_\_\_\_\_, 20\_\_, as set forth on the signature page hereto, with reference to the Comprehensive Development Agreement – TxDOT Statewide Open-Road Toll Collection System between TxDOT and Developer effective as of \_\_\_\_\_, 2005 (as amended, the "Agreement"), with reference to the definitions contained in Exhibit A to the Agreement and the following recitals:

A. Pursuant to Section 2.1.1.2 of the Agreement, TxDOT has the right to designate Project Segments for incorporation into the Work that Developer is required to perform pursuant to the Contract Documents.

B. TxDOT has designated the Project Segment described in the Project description attached hereto as Annex A for incorporation into the Work to be performed by Developer pursuant to the Contract Documents.

C. The parties desire to enter into this Supplement to set forth their agreement regarding those matters required to be set forth in a Project Segment Supplement pursuant to Section 2.1.1.2 of the Contract Documents.

NOW, THEREFORE, in consideration of the sums to be paid Developer by TxDOT, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

**1. Project Segment Pricing**

**1.1** The Project Segment Price to be paid by TxDOT as full compensation for the Work that will be required for Developer to complete the design, construction, installation, integration and warranty of the Project Segment shall be as set forth in Annex B-1.

**1.2** The Project Segment Maintenance Price to be paid by TxDOT as full compensation for the Project Segment Maintenance Work shall be as set forth in Annex B-2.

## **2. Project Segment Completion Deadlines**

The Project Segment System Acceptance Deadline is set forth in Annex C. Other Project Segment Completion Deadlines, determined in accordance with the time frames set forth in Section 4.2 of the Agreement, are set forth in Annex C.

## **3. Liquidated Damages**

Liquidated Damages payable pursuant to Section 17.2 of the Agreement shall be \$ \_\_\_\_\_ per Day.

## **4. Project Segment-Specific Modifications to Contract Documents**

Annex D-1 sets forth any Project Segment-specific modifications to the Contract Documents. These modifications shall only apply to the Project Segment for which this Supplement identifies and not for any other purpose under the Agreement. Federal Prevailing Wage requirements applicable to the Project Segment Work shall be as set forth in Annex D-2.

## **5. Reference Documents/Owner Design Documents**

Annex E lists the information that TxDOT has provided to Developer in connection with the Project Segment, including Reference Documents and available Owner Design Documents.

## **6. TxDOT Supplied Project Approvals**

Annex F lists of TxDOT-Provided Approvals supplied by TxDOT for the Project Segment. Responsibility for obtaining all other required Governmental Approvals shall be as set forth in the Agreement.

## **7. Key Personnel**

Annex G lists the Key Personnel applicable to the Project Segment.

## **8. Developer's Representations, Warranties and Covenants**

Developer hereby renews and makes with respect to the Project Segment all of the Developer's representations, warranties and covenants set forth in Section 2.4 of the Agreement, effective as of the date hereof.

## **9. Terms of Agreement**

This Supplement shall be incorporated into the Agreement and constitutes a material part thereof as if originally set forth in the Agreement. Except as expressly

provided in this Supplement, all terms and conditions of the Agreement shall apply to the Project Segment Supplement Work, and the parties rights and obligations with respect to the Project Segment shall be as provided in the Agreement. The Agreement remains in full force and effect except as expressly supplemented hereby.

IN WITNESS WHEREOF, this Supplement has been executed as of \_\_\_\_\_, 20\_\_.

**Developer:**

**Texas Department of Transportation**

\_\_\_\_\_

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

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

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

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

Registration No.: \_\_\_\_\_

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

APPROVED AS TO FORM:

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

**[if a Guarantor is required under the CDA, insert the below]**

Acknowledged, approved and consented to by:

**Guarantor:**

\_\_\_\_\_

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

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

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

ANNEX A TO PROJECT SEGMENT SUPPLEMENT

**PROJECT SEGMENT DESCRIPTION**

[To be attached.]

ANNEX B-1 TO PROJECT SEGMENT SUPPLEMENT

**PROJECT SEGMENT PRICE**

[Attached.]

ANNEX B-2 TO PROJECT SEGMENT SUPPLEMENT

**PROJECT SEGMENT MAINTENANCE PRICE**

[Attached.]



ANNEX C TO PROJECT SEGMENT SUPPLEMENT

**PROJECT SEGMENT COMPLETION DEADLINES**

**Project Segment System Acceptance Deadline:** \_\_\_\_\_, 20\_\_

**Project Segment Punch List Acceptance Deadline:** \_\_\_\_\_, 20\_\_ (30  
Days after Project Segment System Acceptance Deadline)

**Project Segment Final Acceptance Deadline:** \_\_\_\_\_, 20\_\_ (120  
Days after Project Segment System Acceptance Deadline)

ANNEX D TO PROJECT SEGMENT SUPPLEMENT  
**LIST OF PROJECT SEGMENT-SPECIFIC MODIFICATIONS TO CONTRACT  
DOCUMENTS**

[To be inserted.]

ANNEX E TO PROJECT SEGMENT SUPPLEMENT

**LIST OF REFERENCE DOCUMENTS AND OWNER DESIGN DOCUMENTS**

[To be inserted.]

ANNEX F TO PROJECT SEGMENT SUPPLEMENT

**LIST OF TxDOT-PROJECT APPROVALS FOR PROJECT SEGMENT**

[To be inserted.]

ANNEX G TO PROJECT SEGMENT SUPPLEMENT  
**LIST OF KEY PERSONNEL FOR PROJECT SEGMENT**

[To be inserted.]

**EXHIBIT Q**  
**FORM OF LETTER OF CREDIT**

(ISSUING BANK)

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

Ladies and Gentlemen:

At the request and for the account of \_\_\_\_\_ ("Developer")  
\_\_\_\_\_**[Developer's address]**, we hereby issue this irrevocable stand-by  
letter of credit ("Letter of Credit") pursuant to the Comprehensive Development  
Agreement TxDOT Statewide Open-Road Toll Collection System dated \_\_\_\_\_,  
2005, as the same may be amended, modified or supplemented from time to time (the  
"CDA") in the initial amount of \$\_\_\_\_\_ **[insert the greater of \$1,000,000 or  
20% of the aggregate Pilot System Price and Project Segment Price for Work  
under NTP, not to exceed \$20,000,000]** (the "Stated Amount"). An amount not to  
exceed the Stated Amount may be drawn under this Letter of Credit with respect to the  
occurrence of a Drawing Event (as defined below).

Funds under this Letter of Credit will be made available to you against receipt by us of a  
Demand for Payment (as defined below), duly completed and purportedly signed by a  
representative of the Texas Department of Transportation ("Beneficiary"). Any such  
Demand for Payment shall be presented at our office located at the address set forth  
below or at any other office in the same city which may be designated by written notice  
delivered by us to you. Each Demand for Payment hereunder may be made up to the  
close of business on the Stated Expiration Date. Multiple partial drawings are permitted  
hereunder with respect to the occurrence of a Drawing Event.

If a Demand for Payment is made by you hereunder at or prior to 10:00 a.m., central  
standard time, on a day on which we shall be open for business (a "Business Day"), and  
provided that such Demand for Payment conforms to the terms and conditions hereof,  
payment shall be made by us to you in immediately available funds free and clear of  
and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of  
any kind and regardless of any objection by any third party (subject to any court order or  
judgment), to the account designated below or such other account you may designate in  
the Demand for Payment on the next Business Day after demand is made. If a Demand  
for Payment is made by you hereunder after 10:00 a.m., central standard time, on a  
Business Day, and provided that such Demand for Payment conforms to the terms and  
conditions hereof, such payment shall be made no later than the close of business, local

time of the location of the account designated below or such other account you may designate in the Demand for Payment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: Austin Texas Comptroller Austin  
Routing Number: \_\_\_\_\_  
Account Number: Comptroller of Public Accounts Treasury Operations  
Account Number to Credit: \_\_\_\_\_  
Reference: **[Developer]** Letter of Credit/Statewide Toll System  
Attention: 601 - Texas Department of Transportation  
Diane Ruiz

If any Demand for Payment delivered by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice thereof, stating the reasons therefor and that we will upon your instructions hold any document at your disposal or return the same to you. Upon receipt of any such notice, you may attempt to correct any such non-conformance; provided, however, that any Demand for Payment presented to correct such non-conforming demand must be presented on or prior to the expiration of this Letter of Credit.

The Letter of Credit may be transferred by you upon receipt by us of a transfer request in the form attached hereto as Annex B accompanied by this original Letter of Credit.

In the event of any drawing by you hereunder, we shall immediately notify Developer of such drawing, and request that Developer reimburse us in the amount of such drawing, plus any interest earned thereon. If, and to the extent that, Developer reimburses us prior to the termination date hereof for any amounts drawn by you hereunder, the available amount under this Letter of Credit shall be increased by the amount of Developer's reimbursement.

Except as expressly stated herein, this Letter of Credit is not subject to any condition or qualification. We engage with you that all Demands for Payment made in compliance with the terms of this Letter of Credit will be duly honored upon delivery of documents as specified if presented at this office in the manner described above on or before \_\_\_\_\_, 200\_\_ (the "Stated Expiration Date").

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for an additional period(s) of one year from the present or any future Stated Expiration Date, unless at or before sixty (60) days prior to any such Stated Expiration Date we shall notify the Beneficiary by registered mail or overnight courier at the above address that we elect not to consider this Letter of Credit extended for any such additional one year period. However, the final expiration date of this Letter of Credit will be \_\_\_\_\_, 2020.

This Letter of Credit shall become effective immediately, and shall automatically terminate on the earliest to occur of (i) our honoring of a drawing hereunder in an amount equal to the Stated Amount, or (ii) the close of business on the Stated Expiration Date or any extended date as provided herein.

All notices (including without limitation presentation of any Demand for Payment) to be made to us under this Letter of Credit shall be in writing, shall refer to this Letter of Credit by number, and shall be delivered by hand or sent by registered or certified mail, postage prepaid, return receipt requested, if to us at [address], [attention], or at such address as we shall notify you in writing.

As used herein:

- (i) "Demand for Payment" shall mean the delivery to us of a certificate in the form attached as Annex A hereto.
- (ii) "Drawing Event" shall mean the occurrence of any event under paragraph (2) of the Demand for Payment.

The Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, (including the CDA), instrument or agreement referred to or to which the Letter of Credit relates (except only the certificates referred to herein); and any such reference shall not be deemed to incorporate herein by reference any document (including the CDA), instrument or agreement (except for such certificates). The obligations of the Issuing Bank under this Letter of Credit are the individual obligations of the Issuing Bank and are in no way contingent upon reimbursement with respect thereto from Developer or any other party.

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

This letter of Credit shall be deemed to be a Contract made under the laws of the State of Texas and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflicts of law.

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



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

Very truly yours,

**[ISSUING BANK]**

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

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

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

ANNEX A

TO LETTER OF CREDIT  
DEMAND FOR PAYMENT CERTIFICATE

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

**[ISSUING BANK]**

**RE: Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit")**

The undersigned, a representative of the Texas Department of Transportation (the "Beneficiary"), hereby certifies to **[Issuing Bank]** as follows:

1. The Beneficiary is making a Demand for Payment under the above-referenced Letter of Credit in the amount of US \$ \_\_\_\_\_ (the "Requested Drawing Amount") for credit to Account No. \_\_\_\_\_ of the Beneficiary at **[institution and location of institution]**.
2. [Choose the applicable alternative]

To the best of the Beneficiary's knowledge, under the terms of the CDA, the Developer has failed to perform one or more of its obligations pursuant thereto and the Beneficiary is entitled to exercise this Letter of Credit under the terms thereof.

To the best of the Beneficiary's knowledge, such failure or event is of a nature [Select one: (i) not requiring a notice to remedy under the terms of the CDA or (ii) requiring a notice to remedy under the terms of the CDA (and attached hereto is a copy of the Beneficiary's written notice to the Developer requiring the remedy of such failure or event by the Developer and of the Beneficiary's intention to draw upon the referenced Letter of Credit in respect of such failure or event along with either (x) the registered postal receipt, fax confirmation or overnight courier confirmation for such demand or (y) acknowledgement of receipt of service of such demand from the Developer's agent for service in Texas).]

As a result of Developer's failure to perform such obligation(s), the Beneficiary is entitled to draw \_\_\_\_\_ **[insert amount]** on the Letter of Credit.

or

The Beneficiary is entitled to draw \_\_\_\_\_ **[insert amount]** on the Letter of Credit pursuant to Section 8.2.2 of the CDA.

or

The Beneficiary is entitled to draw \_\_\_\_\_ [insert amount] on the Letter of Credit pursuant to Section 8.2.3 of the CDA.

or

The Beneficiary is entitled to draw \_\_\_\_\_ [insert amount] on the Letter of Credit pursuant to Section 8.2.4 of the CDA.

or

The Beneficiary is entitled to draw \_\_\_\_\_ [insert amount] on the Letter of Credit pursuant to Section 8.2.5 of the CDA.

or

The Beneficiary is entitled to draw \_\_\_\_\_ [insert amount] on the Letter of Credit because the Beneficiary has received written notice from you that the Letter of Credit will not be renewed and as of sixty (60) days prior to the expiration of the Letter of Credit, Developer has not delivered to Beneficiary a satisfactory substitute or replacement Letter of Credit containing terms identical to those set forth in this Letter of Credit or other terms acceptable to Beneficiary in its sole discretion within the time periods set forth in the CDA.

3. The Requested Drawing amount, stated in paragraph 1 above, was computed in compliance with the terms and conditions of the Letter of Credit, does not exceed the Stated Amount of the above-referenced Letter of Credit and does not exceed the amount available to be drawn under such Letter of Credit.
4. This Demand for Payment is made before the Stated Expiration Date of the Letter of Credit.

Capitalized terms used herein (without definition) shall have the respective meanings set forth in the above-referenced Letter of Credit.

IN WITNESS WHEREOF, the undersigned, the [office held] of the Texas Department of Transportation has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[Name]

ANNEX B  
TO

LETTER OF CREDIT  
TRANSFER REQUEST

**To:** [Issuing Bank]

**RE:** Irrevocable Letter of Credit No. \_\_\_\_\_

We hereby request you to transfer all our rights as beneficiary under the Letter of Credit referenced above to a second beneficiary named below.

\_\_\_\_\_  
Name of second beneficiary

\_\_\_\_\_  
Address

We do hereby transfer all our rights as the original beneficiary, including all rights to make drawings under the Letter of Credit, to the second beneficiary. The second beneficiary shall have sole rights as beneficiary, whether existing now or in the future, including rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly by the second beneficiary without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by processing the letter of credit and sending it to the second beneficiary with your customary notice of transfer.

Your transfer fee:

Enclosed is our check for \$\_\_\_\_\_.

You may debit our Account No. \_\_\_\_\_

We also agree to pay you on demand any expenses which may be incurred by you in connection with this transfer.

\_\_\_\_\_  
Name of beneficiary

\_\_\_\_\_  
Address

**EXHIBIT R**  
**EQUIPMENT IDENTIFICATION LIST**

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Exhibit R provides the Equipment Identification List and technical data (catalog cut sheets, specifications, drawings, manuals) on items in the list. The Equipment Identification List is divided into three tables. **Table R-I** identifies the Tolling Zone's Field Replaceable Units (FRU) and associated Shop Replaceable Units (SRU). **Table R-II** identifies the quantity of each FRU used at the various Tolling Zone configurations. **Table R-III** identifies central equipment (not installed at tolling zones), such as the Project Host Server (PHS), Maintenance On-Line Management System (MOMS) and network routers. Table C-IV provides a list of Technical Details for equipment listed in previous tables.

The following notes apply to the tables:

1. **Table R-I.** The size and weight data for IRU cabinet (IRU04) and Generator Cabinet (GEN02) include all contents of the cabinet.
2. **Table R-I.** Commercial availability of items in this list are denoted as follows: CO = Commodity MS = Multi Source, LS = Limited Source, SS = Sole Source. See proposal section 3.2 for definitions.
3. **Table R-I.** Catalog cut sheets, drawings, specifications or manuals are provided for all FRUs and selected SRUs, which are indicated by bold font.
4. **Table R-II Matrix.** The quantity of each FRU needed at a particular tolling point varies.
5. **Table R-II** Configuration IDs (A, C, D, E, F, I2, I3) refer to the descriptions in the Technical Provisions. I2 refers to two managed lanes and I3 refers to three managed lanes.
6. **Table R-I - Table R-III.** Quantities of items, part numbers, dimensions and weights may change due to improvements in design or supplier-initiated product changes.

Following **Table R-IV**, Exhibit R also provides additional support documentation including:

- 2005 NQA Certificate of Registration to Raytheon for ISO 9001:2000 and AS9100 Rev B
- Technical Provisions (TP) Compliance Matrix

**Table R-1 Raytheon Tolling Zone Equipment Identification List**

<i>FRU Ref</i>	<i>FRU Description</i>	<i>SRU Description</i>
IRU01 (MS)	Raytheon Roadside Controller Unit (RCU) Model 521, 522, 523 or 524, with the difference being the number of TransCore Reader Control Cards (RCC) installed. The last digit of the model number indicates the number of RCCs installed. The RCU runs the Raytheon Roadside Toll Collection application software using the QNX operating system. The RCU is a 4U high rack mount item in the main compartment of the IRU cabinet. One RCU controls up to four lanes in a single direction. Sites which cover two directions have two RCUs.	RCU01 – Industrial computer chassis (MS) RCU02 – Passive backplane (MS) RCU03 – Single board computer (LS) RCU04 – Serial IO Card, 8-port (LS) RCU05 – Digital IO Card, 10-timer, 16 in, 16 out, Computer Boards CIO-10 (LS) RCU06 – 160 GB IDE Hard Disk (CO) RCU07 – TransCore Model 10-4020-100 Reader Control Card (SS) RCU08 – Temperature Sensor (MS)
IRU02 (MS)	Raytheon Signal Termination Panel (STP) PN 6137767-2. The STP provides overcurrent protection for all DC-powered gantry and IRU components, and a termination point for cables between the gantries and the IRU components. The STP is 10" wide x 30" high and mounts in the IRU's control compartment. Some SRUs (STP01-STP05) are also field replaceable. Other components on the STP are factory-replaceable.	STP01 – Fuse, 3 amp, indicating (CO) STP02 – Fuse, 5 amp, indicating (CO) STP03 – Connector, 0.1 pitch, 8-position (CO) STP04 – Connector, 0.1 pitch, 12-position (CO) STP05 – 48 VDC to 5 VDC converter (MS) STP06 to STPxx –Other shop-replaceable components are used, including TTL to Differential Line Drivers and Ethernet Isolation Transformers
IRU03 (MS)	Raytheon Power Distribution Unit (PDU) PN TBD. The PDU is 10" wide x 35" high and mounts in the IRU's control compartment. The PDU provides: Overcurrent protection for all AC-powered gantry and IRU components. Automated and manual control of gantry lights, including monitoring of the lights for proper operation. Emergency shutdown button that trips main breaker and shuts off UPS Control of Emergency Ventilation System should cabinet temperature get too high. Automatic over temperature shutdown control.	PDU01 – -Main Circuit Breaker, 2-pole, 30 amp (CO) PDU02 – Main Breaker Shunt Trip device (MS) PDU03 – Branch Circuit Breaker, 1-pole 10 amp (CO) PDU04 – Current Sense Relay (MS) PDU05 – 12 VDC cabinet light supply (CO) PDU06 – Thermostats to control EVS and over temperature shutdown functions (CO) PDU07 to PDUxx –Other shop replaceable components are used including termination blocks, emergency shutdown switches, manual light switches, fused termination blocks, DB9 to terminal screw adapters, etc.
IRU04 (MS)	Raytheon Integrated Roadside Unit (IRU) Cabinet PN 66435-3, which provides an environmentally-protected enclosure for all IRU FRUs. The cabinet dimensions are 54" wide, 36" deep and 74" high. The cabinet and all contents weigh about 2200 pounds.	CAB01 - EVS Damper Motor (LS) CAB02 - EVS Damper Mechanism (MS) CAB03 - Wiring harness (MS) CAB04 - Ventilation Fan (8) (CO) CAB05 - Door Stay (4) (MS) CAB06 - Door Latch Mechanism (4) (MS) CAB07 – Doors and compartment covers (6) (MS)
IRU05 (LS)	Dantherm HMS Air Conditioner Unit (ACU) PN CS030060A. The ACU is 19" wide, 11" deep and 30" high. It weighs about 130 pounds. It includes two filters which are replaced during preventative maintenance activities.	None, this unit is repaired by the factory; or can be repaired by a qualified air conditioning shop. However general periodic cleaning of the air paths is performed at the shop
IRU06 (MS)	Cisco Local Area Network (LAN) Switch PN WS-C3550-24-SMI. This is a 1U high rack mount item in the main compartment of the IRU cabinet.	None, this unit is repaired by the factory.
IRU07 (MS)	Cisco 1000-Base-LH and 1000-Base-Z GBIC Modules PN WS-G5487 and WS-G5486. These modules plug into the LAN switch	None, this unit is not repairable

**Table R-1 Raytheon Tolling Zone Equipment Identification List**

<i>FRU Ref</i>	<i>FRU Description</i>	<i>SRU Description</i>
IRU08 (MS)	Western Telematics Network Power Switch (NPS) PN NBB-1600. The NBB provides 16 network-controlled 120 VAC outputs in a package that is 1.75" wide, 3" deep, 44" high and less than 10 pounds. The NBB is mounted in the main IRU compartment.	None, this unit is not repairable.
IRU09 (LS)	Leibert Uninterruptible Power Supply (UPS) PN GXT2-3000RT120. This is a 2U rack mount item in the main compartment of the IRU cabinet. It weighs 75 pounds.	UPS01 – Battery, 12-volt, 7 amp-hour (MS) UPS02 – Leibert Open Comms Web Card (LS)
IRU10 (LS)	Leibert UPS Battery PN GXT2-72VBATT. This is a 2U rack mount item in the main compartment of the IRU cabinet. It weighs 94 pounds.	Batteries are shop replaceable, multisource items, identical to batteries used in the UPS
IRU11 (MS)	Raytheon Transaction Image Processor (TIP) application running on a Dell PowerEdge 2850 server. This is a 2U rack mount item in the main compartment of the IRU cabinet. It weighs less than 60 pounds. The server has dual Xenon 3 GHz processors, 2 GB RAM, 6 x 300 GB hard disks with RAID 1 & 5 controllers. It runs the MS Server 2003 Operating System	Many components of the Dell Server are field or shop replaceable in accordance with Dell's maintenance manuals.
IRU12 (LS)	Power One Hot-swappable Power Supply Module (PSM) PN PFC375-1028 or PFC375-1048. This mounts inside the Raytheon Redundant Power Supply Chassis. It weighs less than 5 pounds.	None, this item is factory repairable
IRU13 (MS)	Raytheon Redundant Power Supply Chassis PN TBD. This is a 3U rack mount item in the main compartment of the IRU cabinet. It weighs less than 60 pounds when fully populates. The chassis holds up to six power supply modules and has redundant input power.	PSU01 - Raytheon chassis (MS) PSU02 - Wiring harness (MS) PSU03 - AC and DC power indicator lamps (CO) PSU04 - 120 VAC power input module (CO)
IRU14 (MS)	B & B Electronics 100-Base-T to 100-Base-F media converter, PN EMD-100FST. This item is mounted on a DIN-rail inside the IRU's control compartment. It is used to interconnect the LAN's of two ramp tolling zones	None, this item is not repairable
GAN01 (SS)	TransCore RF Module PN 11-3611-100 (Model IT3611). The module is 18" wide, 13" deep and 9" high. It weighs 25 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	None, this item is factory repairable
GAN02 (SS)	TransCore Universal Toll Antenna PN 12-3152-004 (Model AA3152). The antenna is 31.5" wide, 20" deep and 3" high. It weighs less than 30 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	None, this item is not repairable
GAN03 (LS)	Raytheon Vehicle Detection and Classification Assembly PN 6137261-3. The assembly is 9.5" wide, 6.5" deep and 18" high. It weighs less than 15 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	VDC01 -OSI Laser Systems PN AS615 (SS) VDC02 - Raytheon mounting adapter plate (MS) VDC03 - Raytheon connector adapter (MS)



**Table R-1 Raytheon Tolling Zone Equipment Identification List**

<i>FRU Ref</i>	<i>FRU Description</i>	<i>SRU Description</i>
GAN04 (LS)	Raytheon Camera Assembly PN 6137245-104 or -105. The assembly is 6" diameter and 16" long. It weighs less than 10 pounds and is mounted using Raytheon's mounting bracket system with captive hardware. Two variations are provided, the -104 with an LED illuminator (front imaging) and the -105 without the LED illuminator (rear imaging)	CAM01 - Pulnix PN TSC-2030-EN Camera (LS) CAM02 - Raytheon PoE/Trigger Interface Module (MS) CAM03 - Camera Lens (MS) CAM04 - Polarizer (MS) CAM05 - Raytheon Camera Enclosure (MS) CAM06 - Raytheon optical aperture with defogger (MS) CAM07 - Raytheon camera enclosure wiring harness (MS) CAM08 - Raytheon LED illuminator ring (MS)
GAN05 (MS)	Raytheon Light Assembly PN 6137286-2. The assembly is about 8" diameter and 18" long. It weighs less than 10 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	LTG01 - Raytheon enclosure (MS) LTG02 - High-frequency ballast (LS), Hatch Transformers PN MC150-1-J-120U (LS) LTG03 - Phillips Ceramic Metal Halide Lamp PN CDM-T 150W/942 G12 T6 1C (MS) LTG04 - Input connector and wiring (MS) LTG05 - Mounting Brackets (MS) LTG06 - Lamp holder socket (MS) LTG07 - Lamp reflector (LS) LTG08 - Front lens (MS)
GAN06 (MS)	Raytheon Violation Light Assembly PN 6138396-100. The assembly is 24" wide, 7" deep and 24" high. It weighs less than 5 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	VIL01 - Raytheon backer plate & visor (MS) VIL-2 - Yellow LED lamp assembly (MS)
GAN07 (LS)	Raytheon Light Sensor Assembly PN 6137243-2. The assembly is 8" wide, 8" deep and 12" high. It weighs less than 10 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	LS01 - Pulnix Light Sensor PN TLS-200 (SS) LS02 - 2-channel RS-485 to Ethernet converter (MS) LS03 - PoE 12 VDC Interface module (MS)
GAN08 (LS)	Wireless Network Radio (when used), Airaya PN AI108-4958. The radio provides low-throughput (25 Mbps max) network communications between selected sites. The radio is 11" wide, 7" deep and 11" high. It weighs less than 12 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	None, this item is factory repairable
GAN09 (LS)	Wireless Network Radio (when used), Terrabeam 6421e (125 Mbps), 6442e (622 Mbps) or 6451e (1250 Mbps). This radio provides high-throughput network communications between selected sites when fiber optic cable is not available. The radio is 14" wide, 12" deep and 14" high. It weighs less than 25 pounds and is mounted using Raytheon's mounting bracket system with captive hardware.	None, this item is factory repairable
GEN01 (MS)	Generator, Onan 3.6KY-FA/26120J. The generator is 30.5" long, 20.6" wide and 16.4" high. It weighs only 200 pounds. It is mounted on slides for easy 2-person replacement in less than 15 minutes, using a handling dolly. The generator FRU is also equipped with a 12 VDC starter battery.	Many components of the generator are shop replaceable in accordance with Onan's maintenance manuals. All generator maintenance, including scheduled maintenance is done at the shop. Field work is limited to replacing the generator or replacing the air filter

**Table R-1 Raytheon Tolling Zone Equipment Identification List**

<i>FRU Ref</i>	<i>FRU Description</i>	<i>SRU Description</i>
GEN02 (MS)	Intellimeter customized Generator Cabinet. The cabinet is 28" wide, 40" deep and 72" high. The cabinet and all contents weighs less than 1000 pounds.	GCC01 - Wiring harness (MS) GCC02 - Door Stay (2) (MS) GCC03 - Door Latch Mechanism (2) (MS) GCC04 - Compartment Doors (2) (MS) GCC05 - Generator unit sliding shelf (MS) GCC06 - Propane tank sliding shelf (MS)
GEN03 (CO)	Raytheon Propane Fuel Tank Assembly PN TBD. The tank assembly includes all propane valves and fittings. It mounts on a sliding shelf and special dollies are used to facilitate replacement of an empty tank with a full tank in less than 15 minutes by two people. Tanks are refilled, regulators checked and valves tested at a propane shop which eliminates need for propane skills at the roadside.	TNK01 - Propane tank, 200 pound capacity, ASME or DOT certified (CO). TNK02 - Propane tank valve (CO) TNK03 - Propane tank pressure regulator, such as Marshall Brass model 299 or similar (CO). TNK04 - Propane leak sensor & solenoid shutoff valve, such as CCI control 7719 and 7718 (MS) TNK05 - Flexible fuel hose (CO) TNK06 - Propane quick-disconnect (MS)
GEN04 (CO)	Input Transformer (when necessary), 10 KVA, Square D PN 10S1F or similar. Provides conversion of 480 V utility input to 120/240 V distribution voltage. Note: when utility power is 480 V this transformer is included. When utility power is HV, the service drop provides a 120/240 transformer and this transformer is omitted	None, this unit is not repairable
GEN05 (MS)	Uninterruptible 12 VDC Power Supply, Newmar PN "Power-Pac 14AH"	This unit is factory repairable, except for user-replaceable 12 VDC x 7 amp-hr batteries
GEN06 (MS)	Intellimeter customized Power Metering, Distribution and Control Unit. This unit provides all cabinet control and electrical wiring, including:  Input and output overcurrent protection. Load transfer between utility and generator Control of remote shutdown, fuel-leak shutdown and generator fault shutdown A 1-button emergency shutdown Power use meter records utility input energy usage, suitable for billing. Power output metering records fuel use Network access for all control and monitoring functions	Most components are shop replaceable or field replaceable in accordance with Intellimeter's product documentation.

**Table R-II. Field Replaceable Unit Quantity Matrix**

Quantity Provided per Tolling Zone Configuration						
FRU Ref	FRU Description	A	C, D & I2	E, F & I3	K	Remarks
IRU01	RCU	2 x 521	2 x 522	2 x 523	1 x 521	One RCU per direction of travel with one Reader Control Card per lane
IRU02	STP	1	1	1	1	Number of fuses and termination connectors installed on STP varies
IRU03	PDU	1	1	1	1	
IRU04	Cabinet	1	1	1	1	
IRU05	ACU	1	1	1	1	
IRU06	LAN Switch	1	1	1	1	
IRU07	GBIC	0 to 2	0 to 2	0 to 2	0 to 2	Not used when a wireless connection is used between tolling sites.
IRU08	NBB	1	1	1	1	
IRU09	UPS	1	1	1	1	
IRU10	Battery	3	4	5	2	Varies with UPS load, to provide 20 minutes minimum run time
IRU11	TIP	0 or 1	0 or 1	1	0 or 1	One TIP serves 6 mainline or 11 ramp lanes, so they are distributed amongst the IRU cabinets
IRU12	PS Module	5	5	6	3	Varies with loads (cameras & RF modules)
IRU13	PS Rack	1	1	1	1	
IRU14	FO Conv	0	0	0	1	Ties LAN switches of ramp pairs together
GAN01	RF Module	2	4	6	1	One per lane
GAN02	Antenna	4	8	12	2	Two per lane
GAN03	VDAC	8	12	16	4	Two per lane + shoulders
GAN04	Camera	8	12	16	4	Two per lane + shoulders. Front-view cameras include LED illuminator
GAN05	Light	4	6	8	2	One per lane + shoulders (rear-view only)
GAN06	Vio Lt	2	4	6	1	One per lane
GAN07	Light Sensor	1	1	1	1	
GAN08	Radio Low	0 to 2	0 to 2	0 to 2	0 to 2	Low bandwidth radios are used for some network links

**Table R-II. Field Replaceable Unit Quantity Matrix**

<i>Quantity Provided per Tolling Zone Configuration</i>						
<i>FRU Ref</i>	<i>FRU Description</i>	<i>A</i>	<i>C, D &amp; I2</i>	<i>E, F &amp; I3</i>	<i>K</i>	<i>Remarks</i>
GAN09	Radio Hi	0 to 2	0 to 2	0 to 2	0 to 2	High bandwidth radios are used for some network links
GEN01	Generator	1	1	1	0 or 1	One Generator Cabinet provides power for one multilane site or two single lane ramp sites.
GEN02	Cabinet	1	1	1	0 or 1	
GEN03	Fuel tank	1	1	1	0 or 1	
GEN04	Transformer	0 or 1	0 or 1	0 or 1	0 or 1	
GEN05	UPS-12 V	1	1	1	0 or 1	
GEN06	Controller	1	1	1	0 or 1	Transformers are used only where utility power is 480 VAC.

**Table R-III. Raytheon Central Equipment Identification List**

<i>Ref</i>	<i>Item Description and Quantities</i>
CEN01	<p>Maintenance Online Management System (MOMS) Server, Hewlett Packard DL385 Clustered Server, configured as follows:</p> <p>HP 382608-405 DL385 G1 CTO CHASSIS US, 2 each</p> <p>HP 376189-L21 0250 2.4/800-1M DL385 G1 FIO, 2 each</p> <p>HP 376639-B21 HP - Memory - 2 GB ( 2 x 1 GB ) - DDR - 400 MHz / PC3200 – registered, 2 each</p> <p>HP 286776-B22 HP Universal Hard Drive - 36.4 GB - hot-swap - 3.5" - Ultra320 SCSI - 15000 rpm, 4 each (2 per server)</p> <p>HP 338732-B21 HP - CD-ROM drive - plug-in module - 24x - 5.25" - IDE - factory integrated, 2 each</p> <p>HP 335880-B21 HP StorageWorks Modular Smart Array 500 G2 - Hard drive array - rack-mountable - 14 bays - 0 x HD - Ultra320 SCSI - 4 U, 1 each</p> <p>HP 286716-B22 HP Universal Hard Drive - 146.8 GB - hot-swap - 3.5" - Ultra320 SCSI - 10000 rpm, 5 each</p> <p>One MOMS is provided to service all projects</p>
CEN02	<p>Network Router, Cisco Part Number CISC1711-VPN/K9. This router is used at the communications links provided by TxDOT between each project and the CSC. Therefore, one router is provided per project and one is provided at the CSC to serve up to three projects.</p>
CEN03	<p>Project Host Server (PHS).</p> <p>One PHS is provided per project</p>

**Table R-IV. List of Technical Details Provided**

<i>Ref</i>	<i>Description of Technical Detail</i>
IRU01: RCU	Raytheon Roadside Controller Unit (RCU) Cut Sheet
IRU02: STP	Raytheon Signal Termination Panel (STP) Cut Sheet
IRU03: PDU	Raytheon Power Distribution Unit (PDU) Cut Sheet
IRU04: Cabinet	Raytheon Integrated Roadside Unit (IRU) Cut Sheet
IRU05: ACU	Dantherm Indoor/Outdoor Air Conditioners Brochure
IRU06: LAN Switch	Cisco Catalyst 3550 Series Intelligent Ethernet Switches Data Sheet
IRU07: GBIC	Cisco Gigabit Interface Converter Data Sheet
IRU08: NBB	NetReach NBB-1600 Network Boot Bar Data Sheet
IRU09: UPS	Liebert UPStation GXT 2U User Manual, Liebert GXT2U Brochure
IRU10: Battery	Liebert UPStation GXT 2U User Manual
IRU11: TIP	Raytheon Transaction Image Processor (TIP) Cut Sheet, Dell Power Edge 2850 Server Brochure
IRU12: PS Module	Allied Catalog Power One 250 W and 500 W Mid and High Range Power Supplies Data Sheet
IRU13: PS Rack	Raytheon Redundant Power Supply Chassis (PSC) Cut Sheet
IRU14: FO Conv	B&B Electronics Ethernet Media Converters Spec Sheet
GAN01: RF Module	TransCore IT3611RF Module Spec Sheet
GAN02: Antenna	TransCore AA3152 Universal Toll Antenna Spec Sheet
GAN03: VDAC	Raytheon Vehicle Detection and Classification (VDAC) Cut Sheet
GAN04: Camera	Raytheon Traffic Camera Cut Sheet
GAN05: Light	Raytheon Camera Illuminator Assembly Cut Sheet
GAN06: Violation Light	Raytheon Violation Light Assembly Cut Sheet
GAN07: Light Sensor	Raytheon Light Sensor Assembly Cut Sheet
GAN08: Radio Low	Airaya WirelessGRID Outdoor Wireless Bridge Brochure
GAN09: Radio Hi	Terabeam Wireless GigaLink Series Brochure
GEN01: Generator	Onan Commercial MicroQuiet 4000 GenSet Brochure
GEN02: Cabinet	Generator Thin Spec
GEN03: Fuel tank	Generator Thin Spec
GEN04: Transformer	SquareD Dry Type 600 Volts and Below Transformer Brochure
GEN05: UPS-12 V	NewMar Power-Pac Operator's Manual
GEN06: Controller	Generator Thin Spec
CEN01: MOMS	Raytheon Maintenance and On-Line Management System (MOMS) Cut Sheet, HP ProLiant DL385 Quick Spec
CEN02: Router	Cisco 1711/1712 Router Data Sheet
CEN03: PHS	Raytheon Project Host Server (PHS) Cut Sheet, Dell Power Edge 2850 Server Brochure
RCU03: SBC	Trenton Technology Inc Single Board Computer Data Sheet
RCU04: SIO	Connect Tech Echo/ISA Serial IO Card Data Sheet
RCU05: DIO	Measurement Computing Counter/Timers & Digital I/O Specifications
RCU07: RCC	TransCore IT4020-100 Reader Logic Card Spec Sheet
UPS02: NIC	Liebert GXT2U Brochure
VDC01: VDAC	OSI-LaserScan Autosense Series Brochure
CAM01: Camera	Pulnix TSC-2030-EN Camera Data Sheet
LTG02: Ballast	Hatch Metal Halide Ballast Data Sheet
LS01: Light Sensor	Pulnix Light Sensor TLS-200 Technical Specifications

## Technical Provisions Compliance Matrix

This portion of the appendix provides a matrix mapping our TxDOT ORT System compliance to all TxDOT Technical Provisions requirements. The matrix indicates the location within the body of the TxDOT ORT proposal where requirements and elements of the Technical Provisions document are addressed and met. If there are deviations to a requirement or a more detailed description provided, an explanation or description is provided in the Comment column.

The first table below provides acronyms used to indicate level of compliance to TxDOT Technical Provisions requirements. The second table provides the Compliance Matrix. As shown in the compliance matrix, our TxDOT System is 100% compliant with all TP-specified technical requirements.

<i>Acronym Used to Indicate Compliance</i>	<i>Compliance Description</i>
C	Compliant to requirement
PC	Partially compliant to requirement (includes an explanation / description of deviation)
NC	Non-compliant to requirement (includes an explanation / description of deviation)
NA	Not Applicable (i.e., not a requirement)

<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Req. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	1		SECTION 1 - GENERAL REQUIREMENTS	C	
TP	1.1		1.1 General Statement of Scope	C	
TP	1.2		1.2 Program Scope	C	
TP	1.2.1		1.2.1. Project Management Plan (PMP)	C	
TP	1.2.2		1.2.2. Quality Program	C	
TP	1.2.3		1.2.3. Scheduling and Milestone Payments	C	
TP	1.2.4		1.2.4. Documentation and Reporting	C	
TP	1.2.5		1.2.5. Permit Requirements	C	
TP	1.3		1.3 Design and Construction	C	
TP	1.3.1		1.3.1. Use of English Units	C	
TP	1.3.2		1.3.2. Project Segment Configuration Types	C	
TP	1.3.3		1.3.3. Pilot System Configuration Types	C	
TP	1.3.4		1.3.4. Pilot System and Hypothetical Project Segment Scenario Descriptions	C	
TP	1.3.5		1.3.5. Project Initiation	C	
TP	2		SECTION 2 - PROGRAM REQUIREMENTS	C	
TP	2.1		2.1 Project and Facilities Management	C	
TP	2.1.1		2.1.1. Performance Requirements	C	
TP	2.1.2		2.1.2. Program Criteria	C	
TP	2.1.3		2.1.3. Communication Goals	C	
TP	2.1.4		2.1.4. Developer Subcontracts	C	
TP	2.1.5		2.1.5. Document Control	C	
TP	2.1.6		2.1.6. Monthly and Weekly Reports	C	
TP	2.1.7		2.1.7. Facilities and Space Requirements	C	
TP	2.2		2.2 Toll System Services Quality Program	C	
TP	2.2.1		2.2.1. Toll System Services Quality Plans	C	
TP	2.2.2		2.2.2. Delivery of TSSQP	C	



RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	2.2.3		2.2.3. Personnel	C	
TP	2.2.4		2.2.4. Quality Reviews, Submittals and Certification	C	
TP	2.2.5		2.2.5. Inspection and Testing Requirements	C	
TP	2.2.6		2.2.6. Reporting, Record Keeping, and Documentation	C	
TP	2.2.7		2.2.7. Source Inspection	C	
TP	2.2.8		2.2.8. Access to Testing Facilities by TxDOT and Others	C	
TP	2.2.8		2.2.8. Non-conformance Reports	C	
TP	2.2.9		2.2.9. Developer Installation and Testing Scheduling and Notice to TxDOT	C	
TP	2.2.10		2.2.10. Maintenance During Work	C	
TP	2.2.11		2.2.11. Limitations of Installation and Testing Operations	C	
TP	2.2.12		2.2.12. As-Built Documents	C	
TP	2.3		2.3 Engineering Professional Services Quality Program	C	
TP	2.3.1		2.3.1. Engineering Professional Services Quality Program	C	
TP	2.3.2		2.3.2. PSQP Requirements	C	
TP	2.3.3		2.3.3. Engineering Professional Services Quality Control Manager	C	
TP	2.3.4		2.3.4. Engineering Professional Services Quality Review Manager	C	
TP	2.3.5		2.3.5. Senior Experienced Engineers	C	
TP	2.3.6		2.3.6. Personnel in Responsible Charge	C	
TP	2.3.7		2.3.7. Reviewing Professional Services	C	
TP	2.3.8		2.3.8. Professional Services Quality Certification	C	
TP	2.4		2.4 Professional Services Reviews and Submittals	C	
TP	2.4.1		2.4.1. Over-the-Shoulder Reviews	C	
TP	2.4.2		2.4.2. Engineering Professional Services Submittal Review Process	C	
TP	2.4.3		2.4.3. Design Submittal Review Process	C	
TP	2.4.4		2.4.4. Design Submittal Process	C	
TP	2.4.5		2.4.5. Engineering Design Changes	C	
TP	2.5		2.5 Scheduling Requirements	C	
TP	2.6		2.6 Project Records	C	
TP	2.6.2		2.6.1. General Requirements	C	
TP	2.6.2		2.6.2. Project Documentation	C	
TP	2.6.3		2.6.3. Document Control Verification	C	
TP	2.7		2.7 Software Requirements	C	
TP	2.7.1		2.7.1. General Guidelines	C	
TP	2.7.2		2.7.2. Drawing Production/GIS	C	
TP	2.7.3		2.7.3. Electronic Communications	C	
TP	3		SECTION 3 - GENERAL DESIGN REQUIREMENTS	C	
TP	3.1		3.1 Tolling Zone Design	C	
TP	3.1.1		3.1.1. General Scope Requirements	C	
TP	3.1.2		3.1.2. Codes, Standards and Specifications	C	
TP	3.1.3		3.1.3. Tolling Zone Design Documents	C	
TP	3.1.4		3.1.4. Professional Certification	C	
TP	3.2		3.2 Pavement Design	C	
TP	3.2.1		3.2.1. Pavement Smoothness	C	
TP	3.2.2		3.2.2. Traffic Control During Construction	C	
TP	3.2.3		3.2.3. Signs	C	



<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Req. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	3.2.4		3.2.4 Advance Toll Information Signs	C	
TP	3.2.5		3.2.5 Use of Project Logo	C	
TP	3.2.6		3.2.6 Sign Support Structures	C	
TP	3.2.7		3.2.7 Geotechnical Requirements	C	
TP	3.3		3.3 Structural Design	C	
TP	3.3.1		3.3.1 General Requirements	C	
TP	3.3.2		3.3.2 Roadway Work	C	
TP	4		SECTION 4 – TOLLING ZONE REQUIREMENTS		
TP	4.1		4.1 General Requirements		
TP	4.1.1		4.1.1 Hardware Requirements		
TP	4.1.1	1	The system design shall ensure a ten years minimum Service Life.	C	
TP	4.1.1	2	Equipment shall be designed, fabricated, and tested to ensure that it operates satisfactorily without material degradation for a minimum of ten years.	C	
TP	4.1.1	3	All equipment, supplies, and materials for this system shall be new and unused, when installed.	C	
TP	4.1.1	4	Modular Design principles shall be used throughout the system, and shall be defined as the packaging of components together in replaceable units according to the function they perform and by using standardized hardware and components to achieve flexibility of use and to facilitate maintenance.	C	
TP	4.1.1	5	All assemblies, subassemblies, and modules shall be readily accessible for removal, testing or replacement without extensive removal of other modules or assemblies.	C	
TP	4.1.1	6	Components and devices which are susceptible to damage upon failure of the regulating element within a power supply shall be protected by means of an over-voltage protective circuit.	C	
TP	4.1.1	7	The Developer's design and recommendations shall conform to the applicable lightning protection, surge, and transient protection standards, such as NFPA-78, IEEE Std 587, and UL-1447, as they apply to each area of protection.	C	
TP	4.1.1	8	The material and finish for new housings and cabinets shall be environmentally resistant to outdoor highway environments with wide temperature fluctuations and heavy use of salt	C	
TP	4.1.1	9	A minimum of ten (10) years service without additional painting or repairs is required.	C	
TP	4.1.1	10	All cabinets and housings shall be fitted with required gaskets, grommets, and filters to prevent dust, dirt, smoke, moisture or other contaminants from entering the enclosures in accordance with the application in which the equipment is employed.	C	
TP	4.1.1	11	All mounting hardware, bolts, nuts, studs, washers, brackets, screws, hinges, and others shall be new and shall be constructed of non-corrosive material, and of a design to perform their respective functions for the specified ten (10) year system life.	C	

RFP Book	RFP Section	RFP Sub-section	Technical Provisions Requirement	Compliance	Comments
TP	4.1.1	12	All chassis, attachments, and hardware shall be fabricated from corrosion and rust resistant materials, or properly plated to achieve corrosion and rust resistance.	C	
TP	4.1.1	13	For those housings and cabinets requiring locked covers, there shall be no exposed hardware visible or accessible from the outside. The covers shall fit flush with the main body of the housing with no exposed gaskets or seals visible when the cover is closed.	C	
TP	4.1.1	14	The provision and fabrication of all stainless steel materials used in the system shall conform to current ASTM requirements.	C	
TP	4.1.1	15	All welds shall be thoroughly cleaned to remove all oxide scale. Discoloration resulting from the welding process shall be removed from all external surfaces. All grinding, polishing and buffing shall be in accordance with the requirements of the material used.	C	
TP	4.1.1	16	Applicable Codes- All work for this Contract shall be in conformity with the current requirements of the following: National Electric Code; National Electrical Contractors Association (NECA); Occupational Safety and Health Act (OSHA); National Fire Protection Association (NFPA); National Electrical Manufacturers Association (NEMA); Institute of Electrical and Electronic Engineers (IEEE); Applicable Electronic Industries Association (EIA) Standards for Interface and Intercommunication; and Underwriters Laboratories (UL).	C	
TP	4.1.1	17	Diagnostic Firmware shall be embedded into the Tolling Zone controllers and shall perform self-test procedures at the time the equipment is powered on and send periodic diagnostic updates as they operate.	C	
TP	4.1.1	18	Diagnostics shall operate automatically to detect malfunctions and failures and to report such failures to the MOMS system at the time of occurrence.	C	
	4.1.1	19	Diagnostic Software shall be provided to evaluate all aspects of the Tolling System operation including communications.	C	
TP	4.1.2		<b>4.1.2 Required System Availability</b>		
TP	4.1.2	1	The Tolling System shall be designed so that when maintained by the Developer's maintenance forces it will provide very high levels of "Functional Availability."	C	
TP	4.1.2	2	Functional Capability of Group A Performance Requirements defined as Vehicle detection, ETC tag read capability and transaction processing shall have a >99.96% minimum availability.	C	
TP	4.1.2	3	Functional Capability of Group B Performance Requirements defined as Video image capture capability shall have a >99.50% minimum availability.	C	
TP	4.1.2	4	Functional Capability of Group C defined as Automatic Vehicle Classification (AVC) capability shall have a >98.00% minimum availability.	C	

RFP Book	RFP Section	RFP Sub-Section	Technical Provisions Requirement	Compliance	Comments
TP	4.1.2	5	Functional Capability of Group D defined as OCR shall have a >96.00% minimum availability.	C	
TP	4.1.3		4.1.3 Tolling Zone Electrical Requirements		
TP	4.1.3	1	Developer shall provide equipment for filtering, conditioning, and distribution of line power to all necessary Tolling Zone equipment.	C	
TP	4.1.3	2	Developer shall provide an Uninterruptible Power Supply (UPS) as well as emergency backup generator power for each Tolling Zone.	C	
TP	4.1.3	3	The design may utilize a single generator for more than one Tolling Zone.	C	
TP	4.1.3	4	The Developer shall provide appropriate switching hardware to provide for continued uninterrupted operation of the toll collection system spanning an interruption of utility power until emergency generators come on-line and utility power is restored.	C	
TP	4.1.3	5	In addition, generators, UPS, and line power shall be integrated into the system such that when generators become operational and line power returns, the UPS shall switch to charging operations while still protecting UPS-powered equipment and providing filtered power to designated equipment.	C	
TP	4.1.3	6	The UPS shall supply sufficient power so that no data is lost or altered due to the power failure for a minimum, twenty (20) minutes and shall allow regular operation of all system equipment as required to keep the following functional capabilities fully operational during the power failure: •Vehicle detection, ETC tag read capability and transaction processing; •Video image capture capability; •Automatic Vehicle Classification (AVC) capability; and •Communications within the Tolling Zone as well as communications to systems external to the Tolling Zone.	C	
TP	4.1.3	7	Generator power shall come on-line within five minutes after utility power is lost.	C	
TP	4.1.3	8	When utility power is restored, use of utility power shall resume automatically.	C	
TP	4.1.3	9	The UPS shall be self-monitoring and shall provide operational status, fully charged, charging, depleted, and system failure messages to the MOMS system.	C	
TP	4.1.3	10	UPS should contain SNMP management cards and traps should be sent to notify Key Personnel of outages or faults.	C	
TP	4.1.3	11	All toll system equipment shall be powered by systems backed up by the Emergency Generator.	C	
TP	4.1.3	12	Emergency generators shall be provided at all Tolling Zones.	C	
TP	4.1.3	13	Generators and line power shall be integrated into the system such that when generators become operational and line power returns, the UPS shall switch to charging operations while still protecting powered equipment and providing filtered power to designated equipment.	C	

RFP Book	RFP Section	RFP Sub-section	Technical Provisions Requirement	Category	Comments
TP	4.1.3	14	Complete diagnostic reporting of the power systems, UPS, and backup generators shall be available via the maintenance monitoring function of the Developer's system.	C	
TP	4.1.4		4.1.4 Capacity and Data Retention		
TP	4.1.4	1	Tolling Zone system capacities and data retention capabilities shall be sufficient to meet the operational requirements of the Contract Documents.	C	
TP	4.1.4	2	In the event that any part of the communications between the various system components (such as Tolling Zones and the external computer systems with which it communicates) is interrupted, Tolling Zone system components shall be designed to run independently, recording all necessary toll operations data for extended periods.	C	
TP	4.1.4	3	The Tolling Zone shall be able to operate for at least 30 days without communications to external computer systems.	C	
TP	4.1.4	4	During such time(no communication), all toll transaction data and images and other data normally communicated to external systems shall be saved for later transfer, when the communications link is re-stored.	C	
TP	4.1.4	5	The Tolling Zone controllers shall be able to read from and write to a portable device, data which would be normally conveyed via communications link. This device shall then serve as the transfer medium for data to and from the external computer systems.	C	
TP	4.1.4	6	This (portable) device shall then serve as the transfer medium for data to and from the external computer systems.	C	
TP	4.1.4	7	The tag status file shall provide the status for all toll tags issued in Texas and in future other states as well.	C	
TP	4.1.4	8	The system shall be configured to utilize a tag status file as large as 100,000,000 tags.	C	
TP	4.1.4	9	Each Tolling Zone controller shall be able to determine tag status for a transponder account status database of at least 100,000,000 transponders.	C	
TP	4.1.4	10	The Tolling Zone controller shall provide the stand alone design capacities during communication outages for 2,000,000 ETC Transactions.	C	
TP	4.1.4	11	The Tolling Zone controller shall provide the stand alone design capacities during communication outages for 500,000 Violation/Video Tolling Image Captures.	C	
TP	4.1.4	12	The Tolling Zone controller shall provide the stand alone design capacities during communication outages for 200,000 MOMS Reporting Messages.	C	
TP	4.1.5		4.1.5 Environmental Requirements		

RFP Book	RFP Section	RFP Subsection	Technical Provisions Requirement	Compliance	Comments
TP	4.1.5	1	The Developer shall thoroughly investigate all environmental factors that may affect the operation, reliability, and life of the system to be provided under this Contract.	C	
TP	4.1.5	2	The Developer shall select equipment that is appropriate for operation in the environment or shall take adequate steps to protect the equipment from the environment.	C	
TP	4.1.5	3	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform under the environmental conditions of a Minimum Operating Temperature of -30°F (ambient)	C	
TP	4.1.5	4	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform under the environmental conditions of a Maximum operating Temperature of 130°F (ambient)	C	
TP	4.1.5	5	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform under the environmental conditions of a Minimum operating humidity of 15%.	C	
TP	4.1.5	6	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform under the environmental conditions of a Maximum operating humidity of 98%.	C	
TP	4.1.5	7	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform after being subjected to MIL-STD-810E Method 516.4 procedures IV – Bench handling and Package Drop Note: does not apply to roadside cabinet	C	
TP	4.1.5	8	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform after being subjected to $\pm 1g$ from 15Hz through 500 Hz for a period of 15 minutes in three planes. Note: does not apply to roadside cabinet	C	
TP	4.1.5	9	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform after being subjected to IEC 68-2-11 or NEMA 4X enclosures test for corrosion.	C	
TP	4.1.5	10	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform after being subjected to MIL-STD-810E Blowing rain method 506.3 procedure I or NEMA 4X enclosure test for rain.	C	
TP	4.1.5	11	The Tolling Zone equipment when installed in the housing in which it is normally deployed shall be rated to perform after being subjected to IEC-529/MIL STD-810 Sand and dust size smaller or equivalent to coal or salt or NEMA 4X enclosure test for dust.	C	
TP	4.1.5	12	The Developer shall provide certified results from prior testing by the manufacturer or an approved independent test lab to satisfy the environmental qualification requirement. Note: For equipment that is to be installed in an environmentally controlled housing or building, catalog cut sheets showing environmental operating requirements will be acceptable.	C	

RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.1.5.1		4.1.5.1 Lightning protection		
TP	4.1.5.1	1	The following specifications and standards of the latest issue form a part of this specification for lightning protection: <ul style="list-style-type: none"> <li>• Underwriters Laboratories, Inc., (UL) Installation Requirements for Lightning Protection Systems, UL 96A</li> <li>• National Fire Protection Association, ( NFPA) Standard for the Installation of Lightning Protection Systems, NFPA 780</li> <li>• Underwriters Laboratories, Inc., Lightning Protection Components, UL 96</li> </ul>	C	
TP	4.1.6		4.1.6 Time of day/date Control and Synchronization		
TP	4.1.6	1	All processing hardware, computer terminals, and any other device whose operation involves current date and time data for system functionality shall have automatic synchronization features such that all equipment time and date parameters are within necessary synchronization to provide full time correlation with all Tolling Zone events.	C	
TP	4.1.6	2	Synchronization shall ensure that the date/time of every element of the system be within 0.1 seconds of the Master Clock.	C	
TP	4.1.6	3	The Developer shall design the toll system to receive time updates, at pre-determined time intervals that shall be determined during the system design phase, and ensure that the current time is downloaded to the Tolling Zone controllers.	C	
TP	4.1.6	4	System Date and Time functions shall automatically account for time zone (Texas has two time zones), standard time/daylight saving time changes and for leap years.	C	
TP	4.1.7		4.1.7 Documentation Requirements		
TP	4.1.7	1	Developer shall submit all Documentation and Plans in the English language.	C	
TP	4.1.7	2	Developer shall submit Documentation and Plans for TxDOT review and approval in sufficient time for a minimum of two iterations of review/ Developer revision to be completed and still adhere to the schedule.	C	
TP	4.1.7	3	Developer should plan for a minimum TxDOT review time of ten (10) business days.	C	
TP	4.1.7	4	Approval of documents shall not relieve or limit the Developer's responsibility to provide systems in full compliance with the Technical Provisions.	C	
TP	4.1.7	5	If corrections or improvements are requested, the Developer shall resubmit the Documentation and Plans until such time as it is fully acceptable.	C	
TP	4.1.7	6	Any need for re-submittal shall not be seen as a cause for delay in completing the project in accordance with the schedule requirements.	C	
TP	4.1.7	7	Deviations from the Technical Provision requirements that may be contained within Developer submitted documents, even though the document may be approved by TxDOT, shall not have the effect of modifying Contract requirements.	C	

RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.1.7	8	Only specific requests to TxDOT from the Developer for waivers or specification change that are formally approved by TxDOT shall void or change requirements in the Contract.	C	
TP	4.1.7	9	For the Tolling Zone system development portion of the Work the Documentation shall include the documents listed in <u>Section 2.4.3 Design Submittal Review Process</u> at a minimum.	C	
TP	4.1.7	10	Testing and Maintenance Documentation requirements are discussed in the Sections on Test and Maintenance (Section 4.4 - and Section 4.5)	C	
	4.1.7.1		4.1.7.1 Project Management Plan		
TP	4.1.7.1	1	See Section 1.2.1 - Project Management Plan For a description of the project management plan requirements.	C	
	4.1.7.2		4.1.7.2 Software Development Plan		
TP	4.1.7.2	1	A detailed Software Development Plan shall be prepared and submitted to TxDOT.	C	
TP	4.1.7.2	2	This plan shall indicate all elements of the software development process and shall include, but not be limited to, the following: <ul style="list-style-type: none"> <li>• Software Development Schedules;</li> <li>• Software Development Tools;</li> <li>• Assignments to Sub-contractors;</li> <li>• Programming Languages;</li> <li>• Software Development Quality Control and Quality Assurance;</li> <li>• Software Testing Plan;</li> <li>• Software Documentation Plan; and</li> <li>• Software Management Plan.</li> </ul>	C	
TP	4.1.7.2	3	A complete program of software testing shall be defined as part of the Software Development Plan.	C	
TP	4.1.7.3	4	The Developer's testing plan shall include a summary of test procedures, dates and equipment to be used for each particular test.	C	
TP	4.1.7.4	5	The Software Development Plan shall include a description of documentation to be provided for application programs, as well as incorporating standards to be followed and sample documentation, <b>where available</b> .	C	
	4.1.7.3		4.1.7.3 Software Specification		
TP	4.1.7.3	1	The Developer shall prepare a detailed software specification that includes a description of all programs and subroutines satisfying all functional requirements, as set forth in the Contract Documents.	C	
TP	4.1.7.3	2	Flow diagrams shall be included in the software specification for programs used in all subsystems to clearly identify data flow through the system and to illustrate the relationship between individual programs and subroutines.	C	
TP	4.1.7.3	3	A preliminary data dictionary and file/record document shall also be included in the software specification.	C	
TP	4.1.7.3	4	This document shall define all data messages, records and files accessed by more than one program in the toll collection system.	C	



<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Req. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	4.1.7.4		4.1.7.4 Configuration Management Plan		
TP	4.1.7.4	1	The Developer shall develop and provide a Configuration Management Plan for the review and approval by TxDOT to be adhered to throughout the duration of this project.	C	
TP	4.1.7.4	2	A method of configuration management shall be utilized in order to efficiently and accurately track and monitor the progress and changes that occur in all areas of this project.	C	
TP	4.1.7.4	3	At a minimum the Configuration Management Plan shall address the following areas: <ul style="list-style-type: none"> <li>▪ Configuration Control</li> <li>▪ Requirements Management</li> <li>▪ Deviation and specification change requests</li> <li>▪ Data Management</li> <li>▪ Configuration Audits</li> <li>▪ Functional</li> <li>▪ Physical</li> <li>▪ Approval Requirements for Installed Systems</li> <li>▪ Testing Requirements for installed systems</li> </ul>	C	
TP	4.1.7.4	4	At a minimum the Configuration Management Plan shall address the following areas: <ul style="list-style-type: none"> <li>▪ Configuration Status Accounting</li> <li>▪ Document Control And the Library Function</li> <li>▪ Approved Documents</li> <li>▪ Revision History for Documents</li> <li>▪ Physical Item Content</li> <li>▪ Physical Item Where Used</li> <li>▪ Status of Changes</li> <li>▪ Changes by Product/Serial Number</li> <li>▪ Results of Configuration Audits</li> <li>▪ Configuration Management Accounting (As Designed, As Built, As Delivered)</li> <li>▪ Mod Status of Installed Systems</li> </ul>	C	
	4.1.7.5		4.1.7.5 Preliminary Design Documentation		
TP	4.1.7.5	1	The Preliminary Design Documentation shall include detailed information on schedule, organization, technical approach, methodology, risk mitigation and other issues related to a complete plan for software development.	C	



RFP Book	RFP Section	Section Number	Technical Provisions Requirement	Compliance	Comments
TP	4.1.7.5	2	<p>The topics for the Preliminary Design Review (PDR) and the Preliminary Design Documentation shall include, but shall not necessarily be limited to, the following:</p> <ul style="list-style-type: none"> <li>▪ Project Schedule;</li> <li>▪ Organization;</li> <li>▪ Methodology;</li> <li>▪ Overall System Architecture;</li> <li>▪ Requirements for each System or Subsystem;</li> <li>▪ Project Management Plan, Quality Assurance Plan, Software Development Plan, Developer Organization, Schedule Configuration Management Plan;</li> <li>▪ Civil Work Plan;</li> <li>▪ Examine and Assess Alternatives, where appropriate, for Each Subsystem or Component;</li> <li>▪ Assess Design Issues and Associated Risk;</li> <li>▪ Risk Mitigation;</li> <li>▪ Assess Design Alternatives; and</li> <li>▪ Status of environmental testing for system components</li> </ul>	C	
TP	4.1.7.5	3	In addition the Developer shall address and show compliance with quality assurance, reliability, maintainability, software development and other system requirements.	C	
TP	4.1.7.5	4	Hardware concept drawings and preliminary level engineering specifications shall be submitted during this review.	C	
TP	4.1.7.6		<b>4.1.7.6 Detailed Design Documentation</b>		
TP	4.1.7.6	1	The Developer shall provide functional narrative text, system and subsystem block diagrams, data flow diagrams, data structure diagrams, schematics and any other graphic illustrations to demonstrate the technical adequacy of the system design approach and compliance for system hardware and software with quality assurance, reliability, maintainability, software development, and other requirements of these specifications.	C	
TP	4.1.7.6		The Detailed Design Documentation (DDD) shall be reviewed at the Detailed Design Review.	C	
TP	4.1.7.6	2	It shall include such detail as block diagrams, software design, testing procedures, operational procedures, etc.	C	
TP	4.1.7.6	3	A list of equipment for each function along with a description of its role shall be provided.	C	
TP	4.1.7.6	4	The Detailed Design Documentation shall be an extension of both the Contract Documents and the Proposal.	C	
TP	4.1.7.6	5	It shall include such detail as block diagrams, screen layouts, report formats, software design, testing procedures, operational procedures, and other pertinent design documentation.	C	
TP	4.1.7.6	6	A list of equipment for each function along with a description of its role shall be provided. Any equipment listed in the DDD that has not been listed in the Price Sheet or supplemental price sheets shall be accompanied by the equipment specifications.	C	

RFP Book	RFP Section	TP	Technical Provisions Requirement	Compliance	Comments
TP	4.1.7.6	7	Such equipment shall be provided at no increased cost to TxDOT.	C	
TP	4.1.7.6	8	<p>The topics to be discussed in the DDD shall include all of the issues that are described in Section 4.1.7.5 Preliminary Design Documentation and, as a minimum, the following additional items:</p> <ul style="list-style-type: none"> <li>Scope of Project</li> <li>Project Schedule</li> <li>Compliance Review Matrix</li> </ul>	C	
TP	4.1.7.6	9	<p>The topics to be discussed in the DDD shall include all of the issues that are described in Section 4.1.7.5 Preliminary Design Documentation and, as a minimum, the following additional items:</p> <p>Document Requirements and Explanation, including for:</p> <ul style="list-style-type: none"> <li>Tolling Zone Design</li> <li>Functionality</li> <li>System Function Flow Chart – Each Tolling Zone Type</li> <li>Hardware, Specifications and Integration</li> <li>AVC Subsystem</li> <li>VES Subsystem</li> <li>Project Host Server</li> <li>Network Communications</li> <li>Maintenance Functionality</li> <li>MOMS</li> <li>MOMS Messages</li> <li>Maintenance Service and User Interface</li> <li>Spare Parts complement to be provided</li> </ul>	C	
TP	4.1.7.6	10	<p>The topics to be discussed in the DDD shall include all of the issues that are described in Section 4.1.7.5 Preliminary Design Documentation and, as a minimum, the following additional items:</p> <ul style="list-style-type: none"> <li>Hardware, Specifications and Integration</li> <li>Network Communications</li> <li>Maintenance Functionality</li> <li>MOMS</li> <li>Maintenance Service and User Interface</li> <li>Software / Database Design</li> <li>Interface to the ETC account management system</li> <li>Software Specification</li> <li>OS</li> <li>Programming Language</li> <li>Version Management</li> <li>Reports</li> <li>Performance Standards</li> <li>Capacities</li> <li>Degraded Modes of Operations</li> <li>Speed</li> <li>System availability calculations</li> <li>Environmental Requirements and Specifications</li> <li>Network Communications</li> <li>Environmental Testing Results</li> </ul>	C	
TP	4.2		4.2 Functional Requirements		
TP	4.2.1		4.2.1 Tolling Zone Types		

RFP Book	RFP Section	RFP Sub-section Req.	Technical Provisions Requirement	Completion	Comments
TP	4.2.1	1	TxDOT may direct the Developer to implement any of the Tolling Zone configuration types needed for the roadways identified in Section 1.3.2 - Project Segment Configuration Types.	C	
TP	4.2.2		4.2.2 Functional Capabilities		
TP	4.2.2	1	The system shall detect vehicles passing through the Tolling Zone either on the traffic lanes or on the shoulder and shall generate a toll or violation transaction.	C	
TP	4.2.2	2	The system shall correctly read the tag and produce a toll transaction for vehicles carrying properly mounted valid working tag that pass through the Tolling Zone on the traffic lanes.	C	
TP	4.2.2	3	The system shall capture image(s) of the front license plate and image(s) of the rear license plate for vehicles whose tag status file record contains the status indicator requiring that images should always be captured and for vehicles whose passage through the Tolling Zone either on the traffic lanes or on the shoulders does not result in the read of a valid tag;	C	
TP	4.2.2	4	The system shall capture image(s) of the front license plate and image(s) of the rear license plate, but is not required to generate an ETC transaction or classify the vehicle, for vehicles traveling in the reverse direction (applies only for road configurations that do not incorporate a median or barrier separation between opposing directions of travel) or for vehicles that are traveling on the shoulder as they traverse a Tolling Zone;	C	
TP	4.2.2	5	For those transactions that result in image capture, the transaction record shall indicate the reason the image capture occurred.	C	
TP	4.2.2	6	The system shall accurately classify vehicles passing through the Tolling Zone according to the number of axles on the vehicle or an alternative vehicle detection and classification system that meets the Contract Document requirements, classifies based upon height and length of vehicles and is acceptable to TxDOT at its sole discretion	C	
TP	4.2.2	7	For every vehicle the system shall accurately assign the toll due based on the measured classification of the vehicle and the pricing in effect at that particular time of day for the AVC measured vehicle class.	C	
TP	4.2.2	8	The system shall communicate with the TxDOT provided remote computer system to receive the tag status file, the toll table showing how tolls vary by vehicle classification and by time of day	C	
TP	4.2.2	9	The system shall communicate with the TxDOT provided remote computer system to send toll transactions, violation transactions, and violation images.	C	
TP	4.2.3		4.2.3 Communication		

RFP Book	RFP Section	RFP Sub-Section	Technical Provisions Requirement	Compliance	Comments
TP	4.2.3	1	The Developer's Tolling Zone controller shall be designed to meet all performance requirements while communicating with the TxDOT provided remote computer system either directly or via a Developer provided intermediary computer system.	C	
TP	4.2.3	2	The communication link shall operate at a minimum 10Mbps.	C	
TP	4.2.4		4.2.4 Messages Formats/Protocols		
TP	4.2.4	1	Necessary message formats and communication protocol for communicating with TxDOT's CSC are provided in Attachment 1.	C	
TP	4.2.5		4.2.5 Maintenance On-Line Management System		
TP	4.2.5	1	Developer shall provide a Maintenance On-Line Management System (MOMS) as part of the Work under this Contract.	C	
TP	4.2.5	2	The MOMS shall allow for monitoring and reporting of equipment failures within the entire set of Tolling Zones that may be procured under the Agreement.	C	
TP	4.2.5	3	In some instances TxDOT may direct that a replicate MOMS computer is to be provided for a Project Segment. In those instances in which a MOMS is provided specifically for a Project Segment, the users of that system shall only be able to access information that pertains to that particular Segment.	C	
TP	4.2.5	4	Also, TxDOT staff shall have the capability to access the master MOMS to view any maintenance data for all Project Segments, regardless of whether or not a local MOMS is being utilized by Segment specific personnel.	C	
TP	4.2.5	5	The MOMS shall be the focal point for all Tolling Zone system maintenance activities including routine preventive and corrective maintenance, real-time monitoring, repair calls, report generation, etc.	C	
TP	4.2.5	6	Ownership and operational responsibility for individual Road Segments will vary. Access to MOMS information shall be controlled in accordance with the user's Project Segment affiliation as well as assigned work role and the access privileges allocated to that role.	C	
TP	4.2.5	7	Capability shall be provided to restrict access to any subset of the Road Segments and for each Project Segment to assign one or more of four (4) possible roles for that Project Segment to an individual.	C	
TP	4.2.5	8	Access to MOMS information shall require entry of the user's identification and password from which the system shall retrieve the user's assigned Project Segment and role(s).	C	
TP	4.2.5	9	Personnel access levels to MOMS shall be determined by TxDOT staff.	C	

RFP Book	RFP Section	RFP Subsection Req.	Technical Provisions Requirement	Compliance	Comments
TP	4.2.5	10	At a minimum, the MOMS shall be capable of providing the following information: <ul style="list-style-type: none"> <li>▪ Current Tolling Zone operational status;</li> <li>▪ Failure or malfunction location;</li> <li>▪ Failure or malfunction description (w/ priority level);</li> <li>▪ Spare parts inventory quantity and control;</li> <li>▪ Part and equipment description (including part number and serial number);</li> <li>▪ Record of last maintenance activity for a part entered by maintenance staff;</li> <li>▪ Record of last preventive and corrective maintenance activity for a part as entered by maintenance staff; and</li> <li>▪ Historical system information/report generation.</li> </ul>	C	
TP	4.2.5.1		4.2.5.1 Failure Detection and Reporting		
TP	4.2.5.1	1	One primary purpose of the MOMS is to automate the issuance of repair/service calls to maintenance technicians.	C	
TP	4.2.5.1	2	The MOMS shall be designed with the ability to generate work orders with little or no human intervention.	C	
TP	4.2.5.1	3	Work order formats and specifications shall be determined during the design process and approved in writing by TXDOT, or their designated representative.	C	
TP	4.2.5.1	4	The MOMS shall provide for generating a minimum of four (4) different types of work orders, including ad hoc, preventive, corrective and emergency maintenance.	C	
TP	4.2.5.1	5	The work order shall record the source of the work order, either as automatically triggered by MOMS monitoring, or the person reporting the failure (Developer's maintenance technician or TXDOT staff member), or both.	C	
TP	4.2.5.1	6	The MOMS shall also provide the capability to build ad hoc work orders for unusual maintenance activities.	C	
TP	4.2.5.1	7	In addition, a work order shall include, but not be limited to, the following information: <ul style="list-style-type: none"> <li>▪ Date/Time of work order generation;</li> <li>▪ Date/Time/Location of repair or maintenance call;</li> <li>▪ Work order number (sequential); and</li> <li>▪ Failure or malfunction description.</li> </ul>	C	
TP	4.2.5.1	8	The MOMS shall also provide the capability to generate blank work orders for repairs or malfunctions not directly reported by the MOMS.	C	
TP	4.2.5.1	9	Blank work orders shall still be generated for the sequential list maintained in MOMS.	C	
TP	4.2.5.1	10	The MOMS shall allow both automatic and manually activated paging of technicians once a work order has been generated.	C	
TP	4.2.5.1	11	The MOMS shall be designed to accommodate the assignment of priority levels for each failure type.	C	
TP	4.2.5.1	12	MOMS shall assign an initial priority level to each failure but shall provide for manual override by Developer or TXDOT personnel to account for aspects that impact severity level and MOMS cannot assess.	C	

RFP Book	RFP Section	M.P. Section Req.	Technical Provisions Requirement	Comments	Comments
TP	4.2.5.1	13	The paging process shall check to determine the assigned active technician and update the dispatch grid to include the new service call.	C	
TP	4.2.5.1	14	MOMS shall monitor the disposition of service calls and shall generate a page to the maintenance technician and the maintenance manager for any work order not responded to or repaired within the required time.	C	
TP	4.2.5.2		System Monitoring		
TP	4.2.5.2	1	The MOMS shall report the status and performance of all levels of Tolling Zone system equipment in real-time.	C	
TP	4.2.5.2	2	The equipment the MOMS system shall monitor shall include all Pilot Systems and Project Segments provided by the Developer.	C	
TP	4.2.5.2	3	The performance monitoring shall be accessible from any workstation on the TxDOT WAN provided the user has the proper access level.	C	
TP	4.2.5.2	4	The performance monitoring function shall allow the user to select and observe the status and performance of several pre-defined portions of the Tolling Zone system.	C	
TP	4.2.5.2	5	The following is a breakdown of the various levels, and, at a minimum, the degree of information required to be displayed for each level: <ul style="list-style-type: none"> <li>▪ Tolling Zone level components; and</li> <li>▪ All equipment statuses for:</li> <li>▪ Status of all Tolling Zone applications;</li> <li>▪ Tolling Zone identification (ID);</li> <li>▪ Tolling Zone location (Plaza, Tolling Zone ID);</li> <li>▪ Tolling Zone overall operation status (operational/degraded);</li> <li>▪ Current operational status of each major subsystem; and</li> <li>▪ Status of Tolling Zone communications link.</li> </ul>	C	
TP	4.2.5.3		4.2.5.3 Availability Tracking		
TP	4.2.5.3	1	The MOMS shall track and calculate the availability of the Tolling Zone system by function as defined in Section 4.1.2.	C	
TP	4.2.5.3	2	The calculations shall be performed automatically whenever the availability report is run.	C	
TP	4.2.5.3	3	The availability report shall take into account the number of installed Tolling Zones and the length of outages affecting the particular Tolling Zone function.	C	
TP	4.2.5.3	4	The availability report shall be provided both for individual Project Segments and for user selectable groups of Project Segments.	C	
TP	4.2.5.3	5	The availability report shall be provided for user selectable time intervals.	C	
TP	4.2.5.4		Remote Access		
TP	4.2.5.4	1	The MOMS shall be designed with the capability to allow technicians and other users to access the MOMS network over the internet.	C	
TP	4.2.5.4	2	Technicians or maintenance staff shall typically utilize this function while off-site or to log-in and close out a work order.	C	

RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.2.5.4	3	The dial-up access shall be designed to utilize simple dial-up connection tools typically found on laptop computers.	C	
TP	4.2.5.4	4	Access shall be password protected to prevent unauthorized users from gaining access to the MOMS.	C	
TP	4.2.5.4	5	A single network password shall not be acceptable for dial-up users.	C	
TP	4.2.5.4	6	Each user shall use a personal password when logging into MOMS.	C	
TP	4.2.5.4	7	The remote access mechanism shall be installed and maintained in accordance with current TxDOT IT security requirements.	C	
TP	4.2.5.5		4.2.5.5 Inventory/Spare Parts Control		
TP	4.2.5.5	1	The Developer shall provide an integrated spare unit and spare parts inventory control as part of MOMS.	C	
TP	4.2.5.5	2	This function shall be integrated with the Work Order generation function which shall automatically update and maintain the system and spare parts inventory based on Work Orders and technicians recording of parts used during work order closeout.	C	
TP	4.2.6		Tolling Zone Controller(s)		
TP	4.2.6	1	The Developer shall furnish and install Tolling Zone controllers for every Tolling Zone implemented under the Agreement.	C	
TP	4.2.6	2	The Tolling Zone controller shall be designed to provide reliability and availability as specified in Table 1.	C	
TP	4.2.6	3	Subsystem maintenance messages shall be generated and sent to the maintenance on-line management system (MOMS) when Tolling Zone operational changes occur.	C	
TP	4.2.6	4	The Tolling Zone controller shall be capable of controlling all lane equipment, components, and subsystems that constitute the Tolling Zone equipment complement.	C	
TP	4.2.6	5	The Tolling Zone controller shall also be capable of real-time data communications with the TxDOT provided remote computer system across a wide area network (WAN).	C	
TP	4.2.6	6	The Tolling Zone controller shall provide diagnostics on the performance of the Tolling Zone equipment as well as on its own performance and capacities.	C	
TP	4.2.6	7	It shall be possible to remotely reset the Tolling Zone controller in the event of a malfunction or partial shutdown.	C	
TP	4.2.6	8	The Tolling Zone controller shall be designed to support the performance requirements that are summarized in Section 4.2.16.	C	
TP	4.2.6	9	All of the ETC transactions, VES image records, MOMS messages, equipment diagnostic messages and any other data records that are generated by the System shall contain sequential identification numbers that are incorporated into each record.	C	
TP	4.2.6	10	The Developer's Tolling Zone system design shall guarantee delivery of data in a manner consistent with the communication protocol of the CSC Host.	C	



RFP Book	RFP Section	RFP Section Req.	Technical Provisions Requirement	Compliance	Comments
TP	4.2.6	11	If communications at the Tolling Zone are interrupted, after Tolling Zone site communications are restored, the system shall automatically upload all stored transactions, violation images and maintenance messages to the system computer that it is interfaced to and verify that they were successfully transferred.	C	
TP	4.2.6	12	In the event of an extended communications failure, the Tolling Zone controller shall be designed to operate in a stand-alone mode such that stored data, which would usually be sent to the Customer Service Center Host or MOMS server, can be copied to CD, to a laptop computer or downloaded from the controller to a standard media device, such as a CD, USB drive, etc.	C	
TP	4.2.6	13	This shall include all Tolling Zone lane information and transaction data from the Tolling Zone controller, transponder status files, toll rate schedules and related ETC operational data that can be transferred to the Tolling Zone controller.	C	
TP	4.2.6	14	The Tolling Zone subsystem shall also be designed to allow the downloading of the tag status files and other required data from removable media, laptop, a CD or removable disk drive.	C	
TP	4.2.6	15	The Tolling Zone controller shall be able to continue to operate indefinitely in a stand-a-lone mode if the essential data is manually transferred on a periodic basis via laptop computer, or other media device as described above.	C	
TP	4.2.6	16	The Tolling Zone controller shall be designed to store the toll rates, store the time schedules and administer rate schedule changes that might be implemented, including time of day pricing, such as peak and off peak pricing.	C	
TP	4.2.6	17	These changes shall automatically be uploaded to the Tolling Zone controller when they are changed at the Host Computer (via a table that the Host Computer System will transmit to the Tolling Zone controller).	C	
TP	4.2.6	18	Tolling Zone controllers shall record and maintain detailed logs to support maintenance and troubleshooting activity.	C	
TP	4.2.6	19	System activity logs shall be available, via telnet, secure socket shell (ssh), web-server, or other approved method, for at least 30 days, without adversely affecting the normal operation of the Tolling Zone controller.	C	
TP	4.2.6	20	Logs shall include, as a minimum: Chronologic list of events from sensors involved in building toll transactions, each date and time stamped. The list shall include events from vehicle and axle sensors, ETC readers, and all other input, and output devices such as employee login/logout communication status changes, subsystem performance changes (e.g. system degradation). Chronologic list of system events including, tag file database updates, employee access authorization matrix updates, toll table updates, employee subsystem access (i.e., login/logout), software updates.	C	
TP	4.2.7		4.2.7 ETC Tag Reading		



RFP Book	RFP Section	RFP Sub-section	Technical Provisions Requirement	Compliance	Comments
TP	4.2.7	1	TxDOT requires that all systems deployed in Texas shall be interoperable.	C	
TP	4.2.7	2	The Developer shall provide and integrate the ETC readers and antennas that are compatible with the TransCore eGo Plus tags and other ATA protocol compatible tags. The tag model number is 13-0700-120.	C	
TP	4.2.7	3	The ETC reader shall read the tag in every vehicle in the tolled lane but shall not record tags in vehicles traveling in adjacent free lanes. The ETC reader is not required to read the tag in vehicles if they are traveling in the opposite direction or traveling on the shoulder through the Tolling Zone. Although the ETC reader is not required to read tags in vehicles that are traveling in the opposite direction or on the shoulder through the Tolling Zone, if these tags are read they should generate an ETC transaction record.	C	
TP	4.2.7	4	The system shall record one and only one transaction for each vehicle passage through the Tolling Zone.	C	
TP	4.2.8		4.2.8 Image Capture		
TP	4.2.8	1	Violation Enforcement System (VES) equipment shall be installed to capture front and rear license plate images in every Tolling Zone traffic lane, in adjacent shoulders and in a location to capture an image of the license plates for wrong-way traveling vehicles at those Tolling Zone locations that vehicles are able to drive in the wrong direction.	C	
TP	4.2.8	2	The VES equipment shall include, but not be limited to, high speed cameras including an environmentally protected housing, lens, high speed shutter, and filter (as needed), violation trigger device(s), supplemental lighting, wires, cables and connectors, image processing software and hardware with lane equipment and network or server interfaces, mounting brackets, plates and components and all other items necessary for image capture and reporting.	C	
TP	4.2.8	3	These equipment and materials shall be designed, procured, integrated, installed and tested to receive a signal and message when and where a violation has occurred, detect an accurate position of the front and rear license plate of the vehicle.	C	
TP	4.2.8	4	The video system shall capture 24 bit color digital images of the vehicle's front and rear license plates.	C	
TP	4.2.8	5	The number of images shall be as needed to ensure the capture of one or more readable license plate images.	C	
TP	4.2.8	6	The system shall forward for human review no more than three (3) front images and three (3) rear images for each vehicle and the readability success rate shall be judged from the images forwarded.	C	
TP	4.2.8	7	The system shall be capable of capturing readable images of all license plates including motorcycle plates.	C	
TP	4.2.8	8	The images and related transaction data shall be transmitted to an Automatic License Plate Reading (ALPR) capability where the images are processed to acquire the plate number and jurisdiction of issue.	C	

RFP Book	RFP Section	RFP Sub-Section	Technical Provisions Requirement	Compliance	Comments
TP	4.2.8	9	All violation transactions involving lanes operating with defective equipment at the time of the violation shall code the transaction as to the type of equipment malfunction.	C	
TP	4.2.8.1		4.2.8.1 OCR Image Processor		
TP	4.2.8.1	1	The OCR image processor shall be provided to receive, process, and store images sent from connected cameras or from the Tolling Zone controller.	C	
TP	4.2.8.1	2	The OCR image processor shall OCR the images before storing and forwarding them to the Customer Service Center Host.	C	
TP	4.2.8.1	3	The Image processor may be located at each of the Tolling Zones or at a remote location.	C	
TP	4.2.8.1	4	The OCR process shall produce both plate number and jurisdiction of issue for all types of license plates including motorcycle plates.	C	
TP	4.2.8.1	5	The OCR process shall be capable of reading plate fonts for plates issued by Texas and by all its contiguous neighbor states.	C	
TP	4.2.8.1	6	The image processor shall be capable of error logging and shall contain diagnostic software to report errors/failures to the MOMS to facilitate the response to problems encountered by the VES.	C	
TP	4.2.8.2		4.2.8.2 Cameras		
TP	4.2.8.2	1	The number of cameras provided, camera orientation, and camera resolution shall be sufficient to support the image capture and ALPR requirements.	C	
TP	4.2.8.2	2	Camera housings and cabling shall be designed to meet environmental requirements.	C	
TP	4.2.8.2	3	Camera housings and mounting hardware shall be designed for quick installation and replacement.	C	
TP	4.2.8.2	4	The likelihood of capturing a full-plate image for each violation shall be maximized by ensuring that adjacent camera views overlap sufficiently and that image sets from both of two adjacent cameras are captured whenever the vehicle position straddles their field of view.	C	
TP	4.2.8.2	5	The violation images captured in the lanes and then stored and forwarded by the image processor shall be in a compressed digital or "lossless" compression format. The method of image compression shall be approved by TxDOT.	C	
TP	4.2.8.3		4.2.8.3 Image Trigger		
TP	4.2.8.3	1	A reliable and accurate means of triggering the capture of images of the front and rear license plates of the vehicle shall be provided.	C	
TP	4.2.8.3	2	The trigger device selected shall be capable of supporting the capture of vehicle images for vehicles traveling at any speed and for vehicles that are in a single lane or straddle adjacent lanes or travel (or straddle) the roadway shoulder.	C	

RFP Book	RFP Section	RFP Sub-Section	Technical Provisions Requirement	Compliance	Comments
TP	4.2.8.3	3	If a standalone image processor is implemented, in addition to interfacing with the Tolling Zone controller, the trigger shall interface directly with the image processor to support capture of the license plates of passing vehicles when communication with the Tolling Zone controller fails.	C	
TP	4.2.8.4		Supplemental Illumination		
TP	4.2.8.4	1	Supplemental lighting shall be provided, if the Developer deems necessary, to improve lighting deficiencies experienced at various times in the Tolling Zone lanes and enhance the quality of the captured image for OCR processing.	C	
TP	4.2.8.4	2	Any supplemental lighting that the Developer chooses to install shall be deployed within the current right-of-way of each Project Segment and shall not cause light pollution at tolling zones that are in close proximity to neighborhoods.	C	
TP	4.2.8.4	3	VES lighting design shall avoid blinding or otherwise impairing the vision of approaching motorists (cameras for front plate capture) and departing the Tolling Zone (cameras for rear plate capture).	C	
TP	4.2.8.4	4	The VES lighting design shall consider traffic in adjacent lanes and roads as well as traffic traveling in the opposite direction, where applicable. The preferred solution for the supplemental lighting is high speed, high intensity, pulsed or flashed light energized only when images are taken and for only the duration needed to capture images.	C	
TP	4.2.8.4	5	The lighting design shall incorporate automatic intensity adjustment of the light source based on ambient light if and as needed to assure uniform quality of captured images and successful OCR processing.	C	
TP	4.2.8.4	6	The VES design shall incorporate provisions to actively monitor the status of the supplemental light source (working/not working) and report failures through to the MOMS system in a timely manner.	C	
TP	4.2.9		4.2.9. Automatic Vehicle Detection and Classification		
TP	4.2.9	1	The automatic vehicle classification scheme may be based on an axle counting scheme or an alternative vehicle detection and classification system that is acceptable to TxDOT.	C	Alternative vehicle detection and classification system used (VDAC).
TP	4.2.9	2	Sensors and other necessary equipment shall be installed in the pavement or above all toll lanes to automatically measure vehicle class and assess the proper toll.	C	Alternative vehicle detection and classification system used which is mounted above toll lanes (VDAC).

RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.2.9	3	This equipment shall also enable the system to correctly associate payment and AVC class with the vehicle transaction so as to process properly paid vehicles and violators and avoid over or under charging vehicles because of an incorrect association of AVC classification.	C	
TP	4.2.9	4	The AVC classification data shall be used to assign the correct toll for that particular transaction.	C	
TP	4.2.9	5	If the AVC equipment experiences failure that prevents the vehicle classification data from being used for toll rate assignment, the Tolling Zone system shall so indicate in the transaction record.	C	
TP	4.2.9	6	In-pavement devices comprising the AVC subsystem shall not experience any change or degradation of performance from temperature variations, wet conditions and from water collecting on the roadway surface.	NA	Alternative vehicle detection and classification system used (VDAC).
TP	4.2.9	7	The AVC subsystem shall accurately classify vehicles at speeds ranging from 5 mph up to and including 100 mph.	C	
TP	4.2.9	8	If vehicles are traveling below 5 mph, the AVC system shall still attempt to classify the vehicle and pass the information along to the Tolling Zone controller even though there is no requirement to classify vehicles in this speed range.	C	
TP	4.2.9	9	The Tolling Zone controllers shall periodically determine the operational status of the AVC subsystem and if a device has failed, is failing or is degrading in its expected performance level, the controller shall report the status and nature of the failure.	C	
TP	4.2.10		Project Host Server		
TP	4.2.10	1	The Developer shall design, develop and implement a Project Host Server (PHS) that shall serve as a data conduit device to store and transfer data to/from the Tolling Zones and to/from the CSC Host Server.	C	
TP	4.2.10	2	The transaction data shall be aggregated by Project Segment on the associated PHS. The interface between this server and the CSC Host shall be according to the Interface Control Document (ICD) that is presented in Attachment 1	C	
TP	4.2.10	3	The PHS shall also receive and download the current time to the Tolling Zone controllers when this data is received from the CSC Host machine.	C	
TP	4.2.11		Violation Signal		
TP	4.1.11	1	A lane violation signal shall be provided and installed on the downstream end of the gantry(s) over each toll lane.	C	
TP	4.1.11	2	The violation signal shall be visible only from downstream of the gantry.	C	
TP	4.1.11	3	The signal shall be a white light that flashes for an adjustable period each time a vehicle passes below without there being a read of a valid tag that is associated with the vehicle.	C	
TP	4.1.11	4	The signal shall be sufficiently bright for viewing at a distance of 150 feet.	C	

<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Req. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	4.2.12		4.2.12 Toll Gantries		
TP	4.2.12	1	Developer shall provide a suitable set of gantries for their proposed Tolling Zone System.	C	
TP	4.2.12	2	Developer shall present to TxDOT for review and approval the tolling gantry design for each Pilot System and Project Segment.	C	
TP	4.2.12	3	Except as required to address site specific conditions, Developer shall use standardized tolling gantries for like project implementations.	C	
TP	4.2.12	4	Gantry designs shall, as a minimum, have the following characteristics: <ul style="list-style-type: none"> <li>▪ The gantry shall be composed of parts that are standard or easily obtainable;</li> <li>▪ Provide access to overhead equipment for repair or replacement without endangering the maintenance personnel making the repair or the traveling public;</li> <li>▪ Gantries shall be designed sufficiently to support a static, fixed "TxTag" sign that will be placed over each travel lane through the Tolling Zones. The dimensions of the sign are 90 by 90 inches. Three-color graphics will be supplied by TxDOT and the Developer shall furnish the signs;</li> <li>▪ Corrosion resistant;</li> <li>▪ and Capable of withstanding wind loads of up to 100mph with all planned toll equipment mounted thereon.</li> </ul>	C	
TP	4.2.13		4.2.13 Emergency Generator		
TP	4.2.13	1	The Developer shall provide an Emergency Generator for back-up power in the event of a utility outage.	C	
TP	4.2.13	2	The electrical generator shall be powered by natural gas or propane.	C	
TP	4.2.13	3	The generator's fuel tank shall be sized to run under full load for a minimum of 48 hours.	C	
TP	4.2.13	4	Emergency power generators shall be the self-starting type and incorporate automatic switching gear such that upon loss of utility power, generators begin operation and supply power for all operations before UPS power ends.	C	
TP	4.2.13	5	Thus, continuous operation of the toll collection system shall be possible, regardless of power outages.	C	
TP	4.2.13	6	The electrical output of the emergency generator shall be rated at two times the maximum load of all electrical equipment installed at the Tolling Zone, at a minimum.	C	
TP	4.2.14		4.2.14 Roadside Electronics Housing		
TP	4.2.14	1	Tolling Zone controllers and other roadside electronics shall be housed either in a "pillbox" building or in NEMA 4X stainless steel dust-tight and watertight enclosures.	C	
TP	4.2.14	2	The preferred housing for the Tolling Zone controller and other roadside electronics is in a "pillbox" building and that approach shall be used when that approach is not prevented by space constraints.	C	

RFP Book	RFP Section	TP Section	Technical Provisions Requirement	Classification	Comments
TP	4.2.14	3	Developer shall construct a small (approximately 10'x10'), secure, heated and air conditioned "pillbox" building for the purpose.	C	
TP	4.2.14	4	The use of a pillbox or roadside cabinet for individual locations will be determined through mutual agreement between the Developer and TxDOT.	C	
TP	4.2.14	5	The material and finish for new housings and cabinets shall be environmentally resistant to outdoor highway environments with wide temperature fluctuations and use of salt.	C	
TP	4.2.14	6	A minimum of ten (10) years service without additional painting or repairs is required. All cabinets and housings shall be fitted with required gaskets, grommets, and filters to prevent the entry of dust, dirt, smoke, moisture or other contaminants from entering the enclosures in accordance with the application in which the equipment is employed.	C	
TP	4.2.15		4.2.15 Civil Works		
TP	4.2.15	1	In addition to the roadside electronics housing and gantries and gantry foundation, Developer shall be responsible for some of the civil work required in the vicinity of the Tolling Zone such as provision and installation of guardrail, paving for maintenance parking pads, installation of all junction boxes and conduit, and possible installation of sensors and conduit in the roadway, repair or construction of the roadway in the Tolling Zone vicinity, and other civil works required to implement the System.	C	
TP	4.2.16		4.2.16. Performance Requirements		
TP	4.2.16	1	The system shall be designed to support the performance requirements summarized below throughout the vehicle speed range of 0 to 100 mph with the exceptions of vehicle classification and image capture which shall be 5 to 100 mph. The specified performance levels apply to vehicles that are traveling closely together (i.e. platooning) as well as for individual vehicles.	C	
TP	4.2.16	2	Vehicle Detection and Reporting - Success rate of detection of vehicles passing through the Tolling Zone and producing a resulting toll-transaction or violation transaction record, expressed as a percent shall be $\geq 99.8\%$	C	
TP	4.2.16	3	ETC Read Accuracy - Tag Read Success Rate expressed as the percentage of vehicles carrying a properly mounted tag whose passage beneath the antenna produces a correct read shall be $\geq 99.99\%$	C	
TP	4.2.16	4	ETC Read Accuracy - Incorrect Violation Image Capture expressed as a percentage of vehicles carrying a properly mounted tag whose passage beneath the antenna results in the capture of a set of violation images shall be $\leq 0.2\%$	C	
TP	4.2.16	5	ETC Read Accuracy - Reporting an ETC- read of a tag in a vehicle traveling in an adjacent un-tolled lane or in a vehicle in the opposed direction of travel shall be $\leq 0.2\%$	C	

RFP Book	RFP Section	Item Number	Technical Provisions Requirement	Compliance	Comments
TP	4.2.16	6	ETC transaction Processing Speed Requirements - Peak ETC Transaction Processing (per lane over a period of 15 seconds) shall be 2 per second.	C	
TP	4.2.16	7	ETC transaction Processing Speed Requirements - Per hour ETC Transaction Processing (per lane over 1 hour) shall be 2400.	C	
TP	4.2.16	8	<p>Image Capture - Success rate of capturing a human readable plate <sup>(2)</sup> image (both plate number or state of issue are discernable) of a violating vehicle expressed as the percentage of violating vehicles with an unobstructed plate <sup>(3)(4)</sup> shall be <math>\geq 98\%</math></p> <p>Where :</p> <p>(2) Includes plate numbers and jurisdiction of motorcycle plates.</p> <p>(3) Success rate for tractors pulling trailers is based on the front plate only.</p> <p>(4) A license plate shall be judged obstructed when one or more of the following conditions prevent the reading of the plate number:</p> <ul style="list-style-type: none"> <li>▪ The vehicle either has no plate or it is not mounted in the legally required position;</li> <li>▪ The plate is covered by dirt or snow;</li> <li>▪ The plate is unreadable because of damage to the plate such as being bent or broken;</li> <li>▪ The license plate is blocked by an object carried by the violating vehicle (such as a plate frame, overhanging cargo or a trailer towing ball);</li> <li>▪ The license plate is blocked by something in the lane such as a person or another vehicle; or</li> <li>▪ Severe weather conditions such as heavy snow or dense fog block the vehicle image.</li> </ul>	C	
TP	4.2.16	9	VES Processing Speed Requirements - Peak Image Sets Capture (per lane per second over a period of 5 seconds) shall be 2 per second.	C	
TP	4.2.16	10	VES Processing Speed Requirements - Per hour ETC Transaction Processing (per lane over 1 hour) shall be 1000.	C	
TP	4.2.16	11	AVC Accuracy - Percentage Correct Determination of Vehicle Class for group of vehicles, no more than 70% of which are passenger cars, expressed as the percentage of vehicles correctly classified, based on TxDOT's adopted classification scheme shall be $\geq 97.0\%$ .	C	
TP	4.2.16	12	AVC Accuracy - Avoid recording a single vehicle as two or more vehicles, expressed as a success rate in percent shall be $\geq 99.5\%$	C	



RFP Book	RFP Section	TP Number	Technical Provisions Requirement	Category	Comments
TP	4.2.16	13	<p>OCR - Success rate in obtaining an OCR plate extraction that matches the plate image for plates that are human readable and unobstructed <sup>(3)</sup> <sup>(4)</sup> <sup>(5)</sup> <sup>(6)</sup> shall be <math>\geq 90\%</math>.</p> <p>Where</p> <p>(3) Success rate for tractors pulling trailers is based on the front plate only.</p> <p>(4) A license plate shall be judged obstructed when one or more of the following conditions prevent the reading of the plate number:</p> <ul style="list-style-type: none"> <li>▪ The vehicle either has no plate or it is not mounted in the legally required position;</li> <li>▪ The plate is covered by dirt or snow;</li> <li>▪ The plate is unreadable because of damage to the plate such as being bent or broken;</li> <li>▪ The license plate is blocked by an object carried by the violating vehicle (such as a plate frame, overhanging cargo or a trailer towing ball);</li> <li>▪ The license plate is blocked by something in the lane such as a person or another vehicle; or</li> <li>▪ Severe weather conditions such as heavy snow or dense fog block the vehicle image.</li> </ul>	C	
TP	4.2.16	13	<p>(5) OCR success shall be defined as follows:</p> <ul style="list-style-type: none"> <li>▪ For plates issued by Texas, the plate numbers and jurisdictions are correctly identified and reported;</li> <li>▪ For all motorcycle license plates, and vehicles with license plates that are issued by States that are contiguous to Texas (Oklahoma, Louisiana, New Mexico, Arkansas, and Mexico States that border Texas), only the plate numbers are correctly identified and reported and State jurisdictions that are reported shall not be reported incorrectly; and</li> <li>▪ All other jurisdictions that are not listed above are not calculated as part of the OCR percentage requirement.</li> </ul> <p>(6) The OCR success rate shall be judged on a single presented result for the vehicle.</p> <p>(7) The percentage of incorrectly reported OCR results shall apply to all plate types of all jurisdictions.</p>	C	
TP	4.2.16	14	<p>OCR - Percentage of reported OCR results that are incorrect (7) shall be <math>\leq 1\%</math>.</p> <p>Where:</p> <p>(7) The percentage of incorrectly reported OCR results shall apply to all plate types of all jurisdictions.</p>	C	
TP	4.2.16	15	<p>Data Transmission and Processing - Success of the tolling zone transaction records being correctly presented in the Toll System Audit Reports shall be <math>\geq 99.99\%</math>.</p>	C	
TP	4.2.16	16	<p>Data Transmission and Processing - Success rate for the communications protocol used to guarantee message delivery shall be <math>\geq 99.995\%</math>.</p> <p>Where:</p> <p>(8) The communications protocol shall utilize an error detection system, such as CRC, that is capable of detecting any data transmission errors.</p>	C	



<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Req. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	4.3		<b>4.3 Pilot System Program</b>		
TP	4.3	1	The development of the Tolling Zone system(s) for a Pilot System and a Project Segment differ from one another in the following respects:	C	
TP	4.3	2	The testing program for a Pilot System is to be more thorough and test all requirements whereas Project Segment testing will test a subset of the requirements adequate to verify that the installation has been done correctly and any minor differences between the previous Pilot System(s) do not adversely impact the Tolling Zone system's ability to satisfy requirements.	C	
TP	4.3	3	For a Pilot System there may be no requirement for maintenance over an extended period of time if the Pilot System is not to be a permanent installation, though at present the intention is for the Pilot Systems to be permanent toll facilities; and	C	
TP	4.3	4	A Pilot System may be dismantled at the conclusion of the testing period, though again this is not the present intention;	C	
TP	4.3	5	In the case where a Pilot System testing program is conducted on what is to become a permanent tolled road segment there would be essentially be no differences between the Pilot System program and the Road Segment, though the more thorough Pilot System testing would be conducted on only one of what might be multiple Tolling Zones on the Road Segment.	C	
TP	4.3	6	For any Project Segment that has a Tolling Zone configuration that was not previously subjected to Pilot System testing TxDOT may direct that Pilot System level testing be conducted on that configuration as part of the Road System Work.	C	
TP	4.4		<b>4.4 Testing</b>		
TP	4.4.1		<b>4.4.1 Test Plan</b>		
TP	4.4.1	1	Developer shall prepare a detailed plan for testing all components of the Tolling Zone system and its interface to the ETC account management system.	C	
TP	4.4.1	2	This plan shall include environmental certification, functional tests, performance tests and all other tests.	C	
TP	4.4.1	3	Developer shall submit a written report documenting the results for all tests performed and comparing them to the expected results.	C	
TP	4.4.1	4	Tentative dates for conducting the various tests shall be included in the test plan, as submitted by the Developer. Reasonable modifications to these dates may be permitted during the course of the Work provided a written request for such changes is made at least two (2) weeks prior to the revised test date.	C	
TP	4.4.1	5	The Test Plan shall define the following:	C	
TP	4.4.1	6	a. Environmental Certification- The process for certifying that each item of Tolling Zone equipment satisfies the environmental requirements in Section 4.1.5 - Environmental Requirements. This is to be accomplished either by providing documentation for tests previously performed or conducting environmental testing to certify the equipment item	C	

RFP Book	RFP Section	RFP Subsection	Technical Provisions Requirement	Compliance	Comments
TP	4.4.1	7	b. Pilot System Approval Testing- All requirements stated in Sections 4.1 and Section 4.2 are to be verified as being satisfied by Developer's Tolling Zone System as part of the Pilot System Work.	C	
TP	4.4.1	8	The Test Plan shall provide a matrix listing each requirement and how that requirement is to be tested or demonstrated, by inspection, analysis or test.	C	
TP	4.4.1	9	For those requirements that are to be verified through testing, the matrix shall outline the particulars such as the conditions of the test and the number of test runs planned in addition to the method of verification.	C	
TP	4.4.1	10	Conditions of the test should include items such as lighting, type of vehicle, and the speed and movement of the vehicles through the Tolling Zone (left to right, straddling lanes, vehicle speed, and mix of vehicles with and without tags).	C	
TP	4.4.1	11	The Pilot System Approval Testing shall include correlation testing where platoons of closely spaced vehicles, some with and some without tags and the system correctly identifies and captures images of the violators.	C	
TP	4.4.1	12	This identification of violators shall be accomplished without recourse to the use of license plate numbers of the test vehicles.	C	
TP	4.4.1	13	c. Project Segment Approval Testing- The Acceptance testing for Project Segments will be conducted with the presumption that there has been a successful Pilot System Approval Test for a road configuration that is sufficiently similar in nature to the Project Segment that not every requirement stated in Sections 4.1 and Section 4.2 need be re-verified or verified as rigorously as was done for the Pilot System.	C	
TP	4.4.1	14	The Test Plan shall define the subset of the matrix items from the Pilot System Approval Testing matrix that will be targeted for Project Segments.	C	
TP	4.4.1	15	d. Operational Testing- The Test Plan shall define procedures for evaluating the System in a real world environment. The Operational Testing is to be conducted and evaluated by Developer.	C	
TP	4.4.1	16	The Operational Testing Procedures shall include but not necessarily be limited to the following:	C	
TP	4.4.1	17	1. Review of recorded transaction data to identify any patterns that suggest erratic or faulty system behavior. Such indications may prompt further analysis or investigation.	C	
TP	4.4.1	18	2. Review of MOMS and other maintenance data to identify reliability problems.	C	
TP	4.4.1	19	3. Controlled testing through the insertion of test vehicles into real traffic.	C	
TP	4.4.1	20	e. Performance Audit - The Test Plan shall define controlled test procedures for evaluating the System on an annual basis to ensure that system reliability and accuracy has continued to meet the requirements of the RFP and other Contract documents.	C	

RFP Book	RFP Section	RFP Sub-section	Technical Provisions Requirement	Compliance	Comments
TP	4.4.1	21	The Tolling Zone shall also be evaluated to determine whether they continue to satisfy the functional and performance requirements that are stated in the RFP and the other Contract documents. Procedures should be similar to those defined for Operational Testing.	C	
TP	4.4.1	22	TxDOT reserves the right to conduct ad hoc testing during the Performance Audit Tests. TxDOT will provide the necessary vehicles and the test scripts in support of the ad hoc tests that will be conducted. The TxDOT developed ad hoc test scripts will be submitted to the Developer prior to the commencement of the testing. The Developer shall provide 5 days, on an annual basis, of technical support to TxDOT for each ad hoc test that is performed.	C	
TP	4.4.2		<b>4.4.2. Pilot System Approval Test</b>		
TP	4.4.2	1	The tests to be performed shall be defined in the Developer's Pilot System Acceptance Test Procedures which Developer shall prepare and submit to TxDOT	C	
TP	4.4.2	2	Tentative dates for conducting the various tests shall be included with the Pilot System Acceptance Test Procedures. Reasonable modifications to these dates without delaying the overall schedule may be permitted by TxDOT during the course of the Work, provided a written request for such changes is made at least two (2) weeks prior to the revised test date.	C	
TP	4.4.2	3	If there are any failures or anomalies in conducting any test step, Developer shall take the necessary corrective action and the test shall be repeated.	C	
TP	4.4.2	4	In the case that corrective action is undertaken Developer shall perform any necessary regression testing to ensure that such corrective action has not adversely affected the system's ability to pass previously conducted test steps.	C	
TP	4.4.2	5	If necessary this process shall continue until success is achieved.	C	
TP	4.4.2	6	If a Pilot System Acceptance Test indicates that the system and its components are satisfactory, TxDOT will issue written approval of the Pilot Acceptance Test for the configuration. If the results are not satisfactory the Developer shall request the scheduling of a subsequent test re-run to occur after corrective action is completed.	C	
TP	4.4.2	7	Components used in the Pilot System test shall be production models, which would be suitable for installation at Tolling Zones.	C	
TP	4.4.2	8	The Pilot System test shall be performed by the Developer under the supervision of, and with the participation of, TxDOT.	C	
TP	4.4.2	9	TxDOT shall be permitted to conduct ad hoc testing that it deems appropriate after or during the formal tests.	C	
TP	4.4.2	10	Any observed repeatable deficiencies shall be brought to the attention of Developer and these shall be incorporated in the test review and evaluation.	C	
TP	4.4.2	11	If a Pilot System includes several Tolling Zones with identical road configurations Developer may conduct the Pilot System Approval Test on one of the identical Tolling Zones and conduct a Project Segment Approval Test on the remainder.	C	

RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.4.3		4.4.3 Pilot System Approval Test Procedures		
TP	4.4.3	1	Developer shall prepare detailed Acceptance Test Procedures or scripts for the Pilot System Approval Test.	C	
TP	4.4.3	2	The Test Procedures shall cover test set-up, step by step procedures for controlled tests and the expected results for each step.	C	
TP	4.4.3	3	Tests shall be "end-to-end" so that results are tracked through the system, whenever possible. For example, the impact of parameters set by and communicated from TxDOT's or other road operator's central computer system (toll schedule or customer account data for example) are observed in the behavior of the lane systems or results of tests that are conducted in the lanes and plaza are tracked at the central computer. TxDOT will arrange for reports of the transmitted test transactions and video images to be processed by the central computer and provided to Developer.	C	
TP	4.4.3	4	The following are illustrative of the aspects of the system that are to be demonstrated in the tests: <ul style="list-style-type: none"> <li>• Power up tests;</li> <li>• Verify initialization;</li> <li>• Verify data integrity (no loss of data);</li> <li>• Verify diagnostic messages;</li> <li>• Introduce failures;</li> <li>• Verify diagnostic messages;</li> <li>• MOMS Reporting;</li> <li>• Normal Transaction Tests;</li> <li>• Lane operational tests;</li> <li>• Functioning of the Project Host Server and interface to the CSC Host;</li> <li>• Violation Processing;</li> <li>• Various vehicles speeds from 5mph to 100mph;</li> <li>• Varying light conditions;</li> <li>• Various speeds;</li> <li>• Correct identification of violators within a platoon of vehicles;</li> <li>• Proper association of vehicle and transponder;</li> <li>• Platoons of closely spaced vehicles with a mix of tagged and untagged vehicles and vehicles of various types;</li> <li>• ETC transaction tests; and</li> <li>• Tolling Zone stand-alone operation tests.</li> </ul>	C	
TP	4.4.4		4.4.4 Pilot System Approval Test Report		
TP	4.4.4	1	Within 15 days after the Pilot System Approval Test has been completed Developer shall submit a report of the results.	C	
TP	4.4.4	2	The report shall include but shall not be limited to the following:	C	
TP	4.4.4	3	• An executive summary of the overall test results highlighting the general conclusions of the testing and any problems found and corrected;	C	
TP	4.4.4	4	• The testing compliance matrix modified to include indications of any changes to the testing conducted from the initial submission and an assessment of the system's conformance to the requirements;	C	

RFP Book	RFP Section	Req. Number	Technical Provisions Requirement	Compliance	Comments
TP	4.4.4	5	Results of any TxDOT requested ad hoc testing the was undertaken and brought to Developers attention by TxDOT; and	C	
TP	4.4.4	6	An App containing the detailed results of the performance of the test scripts.	C	
TP	4.4.5		<b>4.4.5. Project Segment Approval Test</b>		
TP	4.4.5	1	The tests to be performed shall be as defined in the Developer's Test Plan and Project Segment Approval Test Procedures which Developer shall prepare and submit to TxDOT.	C	
TP	4.4.5	2	The tests shall be conducted for each Tolling Zone that is part of the Project Segment.	C	
TP	4.4.5	3	The tests at TxDOT's option shall be observed by TxDOT or its designee.	C	
TP	4.4.5	4	Developer shall submit a test report for each Tolling Zone in the Project Segment.	C	
TP	4.4.6		<b>4.4.6. Project Segment Approval Test Procedures</b>		
TP	4.4.6	1	The Developer shall prepare Project Segment Acceptance Test Procedures defining the testing to be performed for the installed Project Segment Tolling Zones.	C	
TP	4.4.6	2	The testing shall consist of a suitable subset of the Pilot System Approval Test Procedures that verify the installation and equipment integration at each Tolling Zone has been properly completed, that the functionality demonstrated during the Pilot System Approval Test is in tact and the Tolling Zone system is ready to be placed in service.	C	
TP	4.4.6	3	The tests to be performed shall be as defined in the Developer's Test Plan and in the Project Segment System Test Procedures.	C	
TP	4.4.7		<b>4.4.7. Project Segment Approval Test Report</b>		
TP	4.4.7	1	Within 5 days after the Project Segment System Acceptance Test has been completed Developer shall submit a report of the results.	C	
TP	4.4.7	2	The report shall include but shall not be limited to the following:	C	
TP	4.4.7	3	An summary of the overall test results highlighting the general conclusions of the testing and any problems found and corrected; and	C	
TP	4.4.7	4	An App containing the detailed results of the performance of the test scripts.	C	
TP	4.4.8		<b>4.4.8. Operational Test</b>		
TP	4.4.8	1	The operational test shall be a 90-day evaluation period after the entire Project Segment has been installed and integration tested during which the system will be observed as to its functional and performance characteristics.	C	
TP	4.4.8	2	The Tolling Zone systems shall operate reliably and perform in accordance with the specifications and Contract Document requirements during the test.	C	

RFP Book	RFP Section	RFP Subsection	Technical Provisions Requirement	Compliance	Comments
TP	4.4.8	3	The Tolling Zone systems shall all operate without equipment failure and in accordance with the functional and performance requirements for the last 30 days of the evaluation period or the operational test shall be extended until 30 days operation without major equipment failure and in accordance with the functional and performance requirements is achieved. For this purpose major equipment failure is one that results in the loss of functionality related to Group A, B or C indicated in Table 1 - Tolling Zone System Functional Availability Requirements. Successful completion of the operational test is required for the granting of Project Segment System Acceptance.	C	
TP	4.4.9		<b>4.4.9. Operational Test Procedures</b>		
TP	4.4.9	1	Developer shall prepare Operational Test Procedures defining the procedures and tests to be performed for the installed and operating Project Segment Tolling Zones.	C	
TP	4.4.10		<b>4.4.10. Operational Test Report</b>		
TP	4.4.10	1	Within 15 days after the Operational Test has been successfully completed Developer shall submit a report of the results.	C	
TP	4.4.10	2	The report shall include but shall not be limited to the following:	C	
TP	4.4.10	3	- An summary of the overall test results highlighting the general conclusions of the testing and any problems found and corrected; and	C	
TP	4.4.10	4	- An App containing the test results and data used in evaluating the system's operational performance.	C	
TP	4.4.11		<b>4.4.11. Performance Audit</b>		
TP	4.4.11	1	On an annual basis Developer shall conduct a Performance Audit for each operational Tolling Zone to verify that system reliability and accuracy has not degraded over time and the Tolling Zone systems continue to satisfy the functional and performance requirements that are presented in the system design documentation and all other Contract Documents.	C	
TP	4.4.11	2	System transaction data and reports plus MOMS data for at least the 30 days preceding the Performance Audit shall be utilized in the analysis.	C	
TP	4.4.11	3	In addition, controlled tests shall be conducted by utilizing test vehicles mixed with real life traffic.	C	
TP	4.4.11	4	The initial Performance Audit shall be conducted and successfully completed as a condition of Final Acceptance.	C	
TP	4.4.11	5	A Performance Audit shall be deemed successful by TxDOT if it is determined that the audit shows that the system requirements presented herein and in the Contract documents are met.	C	
TP	4.4.12		<b>4.4.12. Performance Audit Procedures</b>		
TP	4.4.12	1	Developer shall prepare Performance Audit Procedures defining the procedures and tests to be performed for the installed and operating Project Segment Tolling Zones.	C	
TP	4.4.12	2	The procedures shall identify the test vehicles that are to be mixed with real traffic and the results to be obtained from the tests.	C	

RFP Book	RFP Section	RFP Subsection Req.	Technical Provisions Requirement	Compliance	Comments
TP	4.4.12	3	The Performance Audit Procedures shall also define the operational data to be reviewed and the analysis that will be conducted on that data.	C	
TP	4.4.13		<b>4.4.13. Performance Audit Report</b>		
TP	4.4.13	1	Within 15 days after the Performance Audit has been completed Developer shall submit a report of the results.	C	
TP	4.4.13	2	The report shall include but shall not be limited to the following:	C	
TP	4.4.13	3	· A summary of the overall test results highlighting the general conclusions of the testing and any problems found and corrected; and	C	
TP	4.4.13	4	· An App containing the test results and data used in evaluating the system's operational performance.	C	
TP	4.5		<b>4.5 Maintenance</b>		
TP	4.5.1		<b>4.5.1. Maintenance Manager</b>		
TP	4.5.1	1	The Maintenance Manager shall be identified in the Proposal.	C	
TP	4.5.1	2	The Maintenance Manager shall be responsible for the overall maintenance activities for the Work and the Project.	C	
TP	4.5.1	3	The individual designated as the Maintenance Manager must have demonstrated and sufficient experience and capabilities in maintenance activities that are similar in scope to what is expected for the Project, including, without limitation, specific experience in toll system design projects, maintenance procedures of toll system equipment and subsystems and managing field technician personnel.	C	
TP	4.5.1	4	The individual designated as the Maintenance Manager by Developer shall require the approval of TxDOT.	C	
TP	4.5.1	5	Developer shall not replace the Maintenance Manager without the prior written approval by TxDOT.	C	
TP	4.5.1	6	Developer's request to replace the Maintenance Manager shall name a proposed replacement manager, include his/her qualifications and include a statement that he/she will be available fulltime within thirty (30) days.	C	
TP	4.5.2		<b>4.5.2. Maintenance Plan</b>		
TP	4.5.2	1	The Developer shall submit to TxDOT a detailed Maintenance Plan.	C	
TP	4.5.2	2	The plan shall include maintenance staffing and administration, dispatch procedures, communication requirements, preventive maintenance techniques, schedules, and support from outside maintenance service (for example, computer manufacturers), final maintenance equipment list and other details as may be appropriate for inclusion in the Maintenance Plan.	C	
TP	4.5.2	3	If maintenance procedures require any lane closures these shall only be undertaken after TxDOT has approved the lane closure and Developer shall be responsible for maintenance of traffic.	C	
TP	4.5.2	4	The Maintenance Plan shall include procedures to be used from the first use of the toll collection equipment through completion of the Operations and Warranty Period(s).	C	



RFP Book	RFP Section	RFP Sub-section	Technical Provisions Requirement	Compliance	Comments
TP	4.5.2	5	The Plan shall address, but shall not necessarily be limited, to the following:	C	
TP	4.5.2	6	· Standards and General Procedures;	C	
TP	4.5.2	7	· Equipment Maintenance;	C	
TP	4.5.2	8	· Software Maintenance;	C	
TP	4.5.2	9	· Tools;	C	
TP	4.5.2	10	· Spare Parts and Inventory Control;	C	
TP	4.5.2	11	· Maintenance On-line Maintenance System;	C	
TP	4.5.2	12	· Emergency/Corrective Maintenance Procedures;	C	
TP	4.5.2	13	· Preventative Maintenance and Schedules;	C	
TP	4.5.2	14	· Support Services:	C	
TP	4.5.2	15	· Personnel:	C	
TP	4.5.2	16	· Staff Location,	C	
TP	4.5.2	17	· Staff Qualifications;	C	
TP	4.5.2	18	· Training;	C	
TP	4.5.2	19	· Maintenance Facilities/Workshop(s);	C	
TP	4.5.2	20	· Maintenance Records;	C	
TP	4.5.2	21	· Failure Tracking and Corrective Action;	C	
TP	4.5.2	22	· Lane Closure Procedures;	C	
TP	4.5.2	23	· Reliability and Maintainability Analysis and Calculation;	C	
TP	4.5.2	24	· Spare Parts Inventory Levels; and	C	
TP	4.5.2	25	· Maintenance Activity Reports.	C	
TP	4.5.3		<b>4.5.3. Preventive Maintenance</b>		
TP	4.5.3	1	The Developer shall develop a preventive maintenance schedule designed to ensure the required high levels of continuing system performance and availability.	C	
TP	4.5.4		<b>4.5.4. Corrective and Emergency Maintenance</b>		
TP	4.5.4	1	The Developer shall maintain a staff of trained personnel of sufficient quantity and quality to ensure that urgent repairs can be performed 24 hours a day, every day of the year.	C	
TP	4.5.4	2	The Developer shall be required to respond to a maintenance call and have a technician on-site and ready to fix the reported problem within 2 hours from issuance of the maintenance call that is generated and sent by the MOMS.	C	
TP	4.5.4	3	In addition, the Developer shall be required to resolve the reported problem within 2 hours from the time in which the technician is physically on-site.	C	
TP	4.5.4	4	The Developer maintenance technician shall be responsible to report that they have reached the site of the reported problem by contacting the designated TxDOT representative.	C	
TP	4.5.5		<b>4.5.5. Maintenance Service Manual</b>		
TP	4.5.5	1	Five (5) copies of a Maintenance and Service Manual shall be provided to TxDOT for each road segment procured under the Comprehensive Development Agreement.	C	
TP	4.5.5	2	The Maintenance and Service Manual will be used primarily by the Developer's maintenance staff but shall be provided to TxDOT in the event TxDOT should at some point decide to take over the maintenance responsibility for the system.	C	



RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.5.5	3	This comprehensive document shall provide complete detailed technical descriptions of maintenance operations including, but not limited to, the following:	C	
TP	4.5.5	4	· Preventive Maintenance Schedule;	C	
TP	4.5.5	5	· Trouble-Shooting Techniques;	C	
TP	4.5.5	6	· Corrective Measures, both temporary and permanent;	C	
TP	4.5.5	7	· Maintenance Techniques (routine, preventive, and remedial);	C	
TP	4.5.5	8	· Location and availability of support services for all major components;	C	
TP	4.5.5	9	· Point-to-point component wiring schematics and logic signal flows; and	C	
TP	4.5.5	10	· Assembly and disassembly drawings, including exploded view drawings.	C	
TP	4.5.5	11	This manual shall be prepared for technical personnel assigned to the maintenance of the toll collection equipment system.	C	
TP	4.5.5	12	This manual shall include a general description, theory of operation, operator instructions, detailed electrical/electronic logic circuit analysis, mechanical functions, installation, test and trouble-shooting procedures, preventive and corrective maintenance procedures.	C	
TP	4.5.5	13	The Maintenance Manual shall also contain diagrams, schematics, layouts and parts lists required to service each component and circuit board utilized in the toll collection equipment system.	C	
TP	4.5.5	14	Standard service manuals for unmodified commercial products used in the toll collection system shall be acceptable if they contain details and accurate information in order to properly service the specific toll collection equipment supplied under this Contract. Large size diagrams and mechanical assembly diagrams do not have to be reduced or incorporated into the manuals if these drawings are delivered with the manuals.	C	
TP	4.5.5	15	Maintenance Manuals shall be delivered to TxDOT prior to the commencement of toll collection equipment operations.	C	
TP	4.5.6		<b>4.5.6. Spare Parts</b>		
TP	4.5.6	1	The Developer shall provide, and maintain an inventory of all spare parts required to maintain the complete system.	C	
TP	4.5.6	2	The initial inventory shall be a complete complement of spare parts.	C	
TP	4.5.6	3	The Developer shall maintain adequate reserve stock of spare parts and items of equipment located in proximity to and will support each Project Segment.	C	
TP	4.5.6	4	Inability to complete repairs due to the lack of timely availability of spare parts shall not relieve the Developer of its maintenance obligations.	C	
TP	4.5.6	5	The Developer shall maintain a comprehensive, accurate, and auditable parts and spares inventory at a system level by using the MOMS maintenance data base.	C	

<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Reg. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	4.5.7		<b>4.5.7. Maintenance Facilities/Workshop</b>		
TP	4.5.7	1	The Developer shall be responsible for the provision of maintenance office and work facilities equipped and capable of supporting the maintenance of hardware and software for the entire system.	C	
TP	4.5.7	2	The facility shall house spare parts, documentation, communications, and personnel necessary to maintain the entire system.	C	
TP	4.5.8		<b>4.5.8. Maintenance Records</b>		
TP	4.5.8	1	The Developer shall maintain current and accurate records for all system maintenance work.	C	
TP	4.5.8	2	The records shall be organized and managed by a computerized data and information management system as part of MOMS.	C	
TP	4.5.8	3	All system equipment and hardware maintenance events detected or recorded by maintenance staff shall be recorded on the MOMS data base.	C	
TP	4.5.8	4	The MOMS data base shall include, but shall not be limited to, location, equipment nomenclature, serial number, name, date, technician ID, type of failure, date-time of failure, date-time of response to the site and date-time time returned to service, preventive maintenance work, scheduled work, work repair code, failure and repair history, and statistical data on MTBF and MTTR;	C	
TP	4.5.8	5	Records of failures and repairs shall be used to calculate percent Tolling Zone availability for Pilot System or Project segment as well as for the individual Tolling Zones.	C	
TP	4.5.8	6	The Developer shall provide a monthly maintenance summary report to TxDOT. The Authority reserves the right to review the maintenance records and data base files for compliance with system performance requirements.	C	
TP	4.5.8	7	For every monthly maintenance payment period the Developer shall prepare a report ("Maintenance Report") that tracks malfunctions, the times that malfunctions were recorded, the time the technician responded to and the time the technician completed the repair.	C	
TP	4.5.8	8	The report shall also provide the percent availability figures for the month.	C	
TP	4.5.9		<b>4.5.9. Force Majeure Repairs</b>		
TP	4.5.9	1	The Developer shall repair toll system elements that are damaged by Force Majeure events.	C	
TP	4.5.9	2	After effecting the repair and presenting acceptable evidence of a Force Majeure repair and documentation of the costs incurred the Developer shall be reimbursed by TxDOT on a time and material basis.	C	
TP	4.5.9	3	Maintenance repair response time requirements shall not apply in the case of Force Majeure events.	C	
TP	4.5.10		<b>4.5.10. Maintenance Response Time Damages</b>		
TP	4.5.10	1	After reviewing the MTBF, MTTR and functional system availability calculations listed above, plus the locations, configurations and specific needs of the particular Road Segment, TxDOT may assess MTTR and problem resolution damages as specified in the Agreement.	C	

RFP Book	RFP Section	RFP Section Req. #	Technical Provisions Requirement	Compliance	Comments
TP	4.5.11		<b>4.5.11. End of Maintenance Term</b>		
TP	4.5.11	1	The Developer shall be responsible to satisfy the following conditions in order for TxDOT to declare the end of any Maintenance Term on a Pilot System or Project Segment.	C	
TP	4.5.11	2	Developer shall not be released from their maintenance obligations until each of the below described conditions are met to the satisfaction of TxDOT and this is documented in writing by the appropriate TxDOT representative.	C	
TP	4.5.11	3	Inspection – A detailed inspection will be performed by TxDOT staff and the Developer shall provide reasonable support for the inspection;	C	
TP	4.5.11	4	Maintenance Records – Developer shall provide to TxDOT all current and historical maintenance records, equipment and software support contact information, outstanding equipment and second source software warranty paperwork, service records, and other relevant documentation to the satisfaction of TxDOT;	C	
TP	4.5.11	5	Spares Parts, Components, Tools – Developer shall transfer to TxDOT all spare parts, components, boards, tools, and other spare parts to TxDOT. The spare parts and components will be cross-referenced with MOMS to ensure that all parts and components are transferred to TxDOT;	C	
TP	4.5.11	6	Passwords – Developer shall provide all system passwords, user names, and other access and system security information to TxDOT;	C	
TP	4.5.11	7	Training – Developer shall provide maintenance training to designated TxDOT staff to the satisfaction of TxDOT;	C	
TP	4.5.11	8	Manuals and Drawings – Developer shall provide revised, fully updated versions of all maintenance manuals, current Maintenance Plan, installation drawings, as-built drawings, and other relevant documentation to the satisfaction of TxDOT; and	C	
TP	4.5.11	9	Spare Equipment Repair – Developer shall repair all spare equipment, to the satisfaction of TxDOT.	C	
TP	4.5.11	10	TxDOT will not grant End of Maintenance Term Acceptance until each of the above listed conditions is met, to the satisfaction of TxDOT.	C	
TP	5		<b>SECTION 5 - GOVERNMENTAL APPROVALS</b>	C	
TP	5.1		5.1 Compliance Requirements	C	
TP	5.2		5.2 Environmental Permits	C	
TP	5.3		5.3 Other Permits	C	
TP	6		<b>SECTION 6 - UTILITIES</b>	C	
TP	7		<b>SECTION 7 - PROJECT SCHEDULE SUBMITTALS</b>	C	
TP	7.1		7.1 General Description of Schedule Scope	C	
TP	7.1.1		7.1.1 Project Milestones	C	
TP	7.1.2		7.1.2 Project Float	C	
TP	7.2		7.2 Scheduling Requirements	C	
TP	7.2.1		7.2.1 Project Schedule	C	
TP	7.2.2		7.2.2 Work Breakdown Structure (WBS)	C	
TP	7.3		7.3 Progress Reporting and Updates	C	
TP	7.3.1		7.3.1 Project Schedule Revisions	C	

<i>RFP Book</i>	<i>RFP Section</i>	<i>RFP Section Req. #</i>	<i>Technical Provisions Requirement</i>	<i>Compliance</i>	<i>Comments</i>
TP	7.3.2		7.3.2 Monthly Progress Reports	C	
TP	7.3.3		7.3.3 Delays	C	
TP	7.3.4		7.3.4 Incorporation of Changes	C	
TP	7.3.5		7.3.5 Recovery Schedule	C	
TP	8		SECTION 8 - CONSTRUCTION MONITORING	C	
TP	8.1		8.1 Civil Construction Quality Program (CQP)	C	
TP	8.1.1		8.1.1 Quality Control/Quality Acceptance Program (QQQAP)	C	
TP	8.1.2		8.1.2 Developer's CQP Organization	C	
TP	8.1.3		8.1.3 Inspection and Testing Requirements	C	
TP	8.1.4		8.1.4 Requirements of Laboratories	C	
TP	8.1.5		8.1.5 Source Inspection	C	
TP	8.1.6		8.1.6 Access to Testing Facilities by TxDOT and Others	C	
TP	8.2		8.2 Materials on Project Site	C	
TP	8.3		8.3 Foundation Test Loads	C	
TP	8.4		8.4 Non-conformance Report	C	
TP	8.5		8.5 Developer Scheduling and Notice to TxDOT	C	
TP	8.6		8.6 Safety and Health Plan	C	
TP	8.7		8.7 Maintenance During Work	C	
TP	8.8		8.8 Housekeeping and Maintenance of the Final ROW	C	
TP	8.9		8.9 Protection of Surface Waters and Flood Plains	C	
TP	8.10		8.10 Protection and Restoration of Property and Landscape	C	
TP	8.11		8.11 Limitations of Construction Operations	C	
TP	8.12		8.12 Shop and Working Drawings	C	

EXHIBIT S

FORM OF MAINTENANCE PAYMENT DRAW REQUEST

Draw Request # \_\_\_\_\_

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

month/day/year

Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, TX 78761

\_\_\_\_\_ "Entry Required in Cell"

Draw Request for Work performed for the period: \_\_\_\_\_ to \_\_\_\_\_  
month/day/year month/day/year


Original Contract Maintenance Price (per month)

Approved Change Order Amounts

Revised Contract Maintenance Price (for the current month)

Current Monthly Payment Request

Cumulative Contract Maintenance Price Earned to Date

Printed Name Developer's Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 2 of 2 for Draw Request Checklist)

## MAINTENANCE PAYMENT REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- ☐ Monthly progress report as described in Section 7 of the Technical Provisions
- ☐ Certifications by the Project Manager and Maintenance Manager;
- ☐ Work conforms to the approved and updated (if applicable) Maintenance Plan;
- ☐ Monthly report of personnel hours;
- ☐ Payment Request data sheet(s), documents and summary that support and substantiate the Performance Requirements have been met;
- ☐ Maintenance On Line Management System documenting all maintenance activities at a minimum including operating statistics and system accuracy and availability, inventory and other requested information, special events and incidents ;
- ☐ Certification by the TSSQM that the Maintenance On Line Management System is performing according to required specifications;
- ☐ Submitted and approved System updates, As- Built Documents and changes to the Maintenance Plan and Procedures, Open Road Toll System manual if applicable;
- ☐ Sealed envelop of current updated Software Source Code to the Source Code Escrow, if applicable.

### NOTE – following for information only

Maintenance Payment Request, Developer shall submit a certificate in a form approved by TxDOT and signed and sealed by the Project Manager and Maintenance Manager, certifying that:

- ◆ Except as specifically noted in the certification, all Work, including that of designers, Subcontractors, Suppliers and Fabricators, which is the subject of the Maintenance Payment Request conforms to the required performance specifications and has been checked and/or inspected by the TSSQCM (with respect to Toll System Maintenance) and the CQAM (with respect to roadway maintenance Work);

- ◆ Except as specifically noted in the certification, all Work which is the subject of the Maintenance Payment Request conforms to the requirements of the Contract Documents, the Governmental Approvals and applicable Law; and
- ◆ The PSQP, TSSQCP and the CQP and all of the measures and procedures provided therein are functioning properly and are being followed.



**EXHIBIT T**  
**INTENTIONALLY OMITTED**

**EXHIBIT U-1**  
**PILOT SYSTEM PRICES**

**[See Attached]**

# PRICING-PILOT SYSTEMS #1

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization, Bonds, Insurance and Letter of Credit</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		\$131,785.54
2	Bonds		Lump Sum		\$84,693.00
3	Insurance		Lump Sum		\$75,000.00
4	Letter of Credit		Lump Sum		\$6,000.00
5	<b>Subtotal – Mobilization, Bonds, Insurance and Letter of Credit</b>		<b>Subtotal A</b>		<b>\$297,478.54</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
6	Tolling Zone Controller	5	Each	\$27,008.80	\$135,043.99
7	ETC Subsystem	16	Each	\$13,027.38	\$78,164.31
8	Automatic Vehicle Detection & Classification Subsystem	24	Each	\$8,890.07	\$213,361.58
9	Video Enforcement Subsystem	24	Each	\$8,897.73	\$213,545.58
10	Violation Signal	6	Each	\$660.83	\$3,964.95
11	Overhead Gantry Structure	5	Each	\$110,621.83	\$553,109.17
12	Communications Equipment		Lump Sum		\$27,539.44
13	Uninterruptible Power Supply (UPS)		Lump Sum		\$33,407.40
14	Backup Power Generator		Lump Sum		\$51,144.68
15	Maintenance On-Line Management System (MOMS)		Lump Sum		\$4,666.34
16	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$44,897.93
17	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$1,358,845.37</b>
<b>C</b>	<b>Installation/Construction</b>				
18	Tolling Zone Equipment Installation		Lump Sum		\$393,747.02
19	Traffic Control		Lump Sum		\$1,735.72
20	Overhead Gantry Installation (includes foundation and base)	5	Each	\$8,634.33	\$43,171.64
21	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$64,944.90
22	Geotechnical Survey/Test		Lump Sum		\$193,588.53
23	*"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$197,521.72
24	Toll Zone Ambient Lighting		Lump Sum		\$31,584.15
25	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$98,400.46
26	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$85,011.73
27	Incidental Construction		Lump Sum		\$54,298.39
28	Tolling Zone Utilities				
29	Communications		Lump Sum		\$55,844.30
30	Electric		Lump Sum		\$53,860.88
31	Gas		Lump Sum		\$0.00
32	Miscellaneous (Installation/Construction)		Lump Sum		\$212,285.42
33	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$1,485,974.82</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
34	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		\$126,067.85
35	Design/Development		Lump Sum		\$223,098.10
36	Integration and Operation Testing		Lump Sum		\$380,682.04
37	Software License Fee		Lump Sum		\$0.00
38	Project Documentation (including As-builts)		Lump Sum		\$31,751.30
39	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
40	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$761,599.30</b>
41	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$3,903,898.03</b>

# PRICING-PILOT SYSTEMS #2

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		\$177,511.72
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$177,511.72</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	7	Each	\$23,638.24	\$165,467.69
3	ETC Subsystem	12	Each	\$12,590.85	\$151,090.22
4	Automatic Vehicle Detection & Classification Subsystem	40	Each	\$8,873.71	\$354,948.29
5	Video Enforcement Subsystem	40	Each	\$8,881.36	\$355,254.39
6	Violation Signal	12	Each	\$669.61	\$7,915.32
7	Overhead Gantry Structure	7	Each	\$122,428.06	\$856,996.43
8	Communications Equipment		Lump Sum		\$36,740.55
9	Uninterruptible Power Supply (UPS)		Lump Sum		\$50,260.76
10	Backup Power Generator		Lump Sum		\$68,232.44
11	Maintenance On-Line Management System (MOMS)		Lump Sum		\$5,822.20
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$44,815.32
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$2,097,543.59</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		\$358,516.59
15	Traffic Control		Lump Sum		\$15,263.65
16	Overhead Gantry Installation (includes foundation and base)	7	Each	\$8,471.43	\$59,300.01
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$68,892.94
18	Geotechnical Survey/Test		Lump Sum		\$115,970.28
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$275,919.03
20	Toll Zone Ambient Lighting		Lump Sum		\$52,543.39
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$58,334.89
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$87,246.57
23	Incidental Construction		Lump Sum		\$63,963.33
24	Tolling Zone Utilities				
25	Communications		Lump Sum		\$67,937.89
26	Electric		Lump Sum		\$94,991.59
27	Gas		Lump Sum		\$0.00
28	Miscellaneous (Installation/Construction)		Lump Sum		\$253,654.37
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$1,572,534.53</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		\$125,835.87
31	Design/Development		Lump Sum		\$235,914.52
32	Integration and Operation Testing		Lump Sum		\$379,981.56
33	Software License Fee		Lump Sum		\$0.00
34	Project Documentation (including As-builts)		Lump Sum		\$31,692.88
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$773,424.83</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$4,621,014.66</b>

# PRICING-PILOT SYSTEMS #3

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		\$271,677.18
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		\$271,677.18
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	71	Each	\$38,235.51	\$267,648.57
3	ETC Subsystem	32	Each	\$11,902.82	\$380,890.11
4	Automatic Vehicle Detection & Classification Subsystem	88	Each	\$8,808.77	\$775,259.87
5	Video Enforcement Subsystem	88	Each	\$8,817.37	\$775,928.45
6	Violation Signal	32	Each	\$654.86	\$20,955.43
7	Overhead Gantry Structure	7	Each	\$190,014.56	\$1,330,101.90
8	Communications Equipment		Lump Sum		\$62,443.27
9	Uninterruptible Power Supply (UPS)		Lump Sum		\$69,198.75
10	Backup Power Generator		Lump Sum		\$115,966.08
11	Maintenance On-Line Management System (MOMS)		Lump Sum		\$8,092.34
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$44,482.42
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		\$3,849,977.19
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		\$550,421.31
15	Traffic Control		Lump Sum		\$15,153.88
16	Overhead Gantry Installation (includes foundation and base)	7	Each	\$9,699.62	\$67,897.34
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$203,226.00
18	Geotechnical Survey/Test		Lump Sum		\$115,134.71
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$273,835.45
20	Toll Zone Ambient Lighting		Lump Sum		\$114,762.59
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$59,250.91
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$108,482.26
23	Incidental Construction		Lump Sum		\$78,830.98
24	Tolling Zone Utilities				
25	Communications		Lump Sum		\$78,210.30
26	Electric		Lump Sum		\$96,067.39
27	Gas		Lump Sum		\$0.00
28	Miscellaneous (Installation/Construction)		Lump Sum		\$342,072.44
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		\$2,103,345.24
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		\$124,929.21
31	Design/Development		Lump Sum		\$235,292.53
32	Integration and Operation Testing		Lump Sum		\$377,243.75
33	Software License Fee		Lump Sum		\$0.00
34	Project Documentation (including As-builts)		Lump Sum		\$31,464.53
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		\$768,920.02
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				\$6,993,919.73

**EXHIBIT U-2**

**HYPOTHETICAL PROJECT SEGMENT PRICES**

**[See Attached]**

**PRICING-HYPOTHETICAL PROJECT SEGMENT #1-1**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		\$271,682.74
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$271,682.74</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	8	Each	\$27,371.75	\$218,973.97
3	ETC Subsystem	10	Each	\$14,455.83	\$144,558.25
4	Automatic Vehicle Detection & Classification Subsystem	40	Each	\$9,906.76	\$396,270.46
5	Video Enforcement Subsystem	40	Each	\$9,915.30	\$396,612.20
6	Violation Signal	10	Each	\$736.40	\$7,364.00
7	Overhead Gantry Structure	8	Each	\$139,436.02	\$1,115,488.14
8	Communications Equipment		Lump Sum		\$51,049.03
9	Uninterruptible Power Supply (UPS)		Lump Sum		\$60,706.95
10	Backup Power Generator		Lump Sum		\$94,805.33
11	Maintenance On-Line Management System (MOMS)		Lump Sum		\$6,500.00
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$50,032.60
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$2,542,360.92</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		\$502,677.94
15	Traffic Control		Lump Sum		\$2,359.76
16	Overhead Gantry Installation (includes foundation and base)	8	Each	11,869.97	\$94,959.76
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$103,486.92
18	Geotechnical Survey/Test		Lump Sum		\$157,854.92
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$361,767.49
20	Toll Zone Ambient Lighting		Lump Sum		\$58,660.38
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$224,094.85
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$186,312.10
23	Incidental Construction		Lump Sum		\$81,573.06
24	Tolling Zone Utilities				
25	Communications		Lump Sum		\$71,319.71
26	Electric		Lump Sum		\$119,540.65
27	Gas		Lump Sum		\$0.00
28	Miscellaneous (Installation/Construction)		Lump Sum		\$292,252.24
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$2,256,961.71</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		\$171,392.14
31	Design/Development		Lump Sum		\$362,246.23
32	Integration and Operation Testing		Lump Sum		\$424,218.03
33	Software License Fee		Lump Sum		\$0.00
34	Project Documentation (including As-builts)		Lump Sum		\$43,166.63
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,021,023.03</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$6,092,028.40</b>

**PRICING-HYPOTHETICAL PROJECT SEGMENT #1-2**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		\$493,792.79
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$493,792.79</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	13	Each	\$31,851.41	\$414,068.37
3	ETC Subsystem	20	Each	\$14,179.47	\$283,589.41
4	Automatic Vehicle Detection & Classification Subsystem	80	Each	\$9,906.76	\$792,540.91
5	Video Enforcement Subsystem	80	Each	\$9,815.30	\$785,224.39
6	Violation Signal	20	Each	\$736.40	\$14,727.99
7	Overhead Gantry Structure	13	Each	\$138,637.31	\$1,802,285.07
8	Communications Equipment		Lump Sum		\$101,205.23
9	Uninterruptible Power Supply (UPS)		Lump Sum		\$109,356.81
10	Backup Power Generator		Lump Sum		\$187,952.58
11	Maintenance On-Line Management System (MOMS)		Lump Sum		\$9,100.00
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$50,032.60
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$4,558,083.36</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		\$1,008,916.05
15	Traffic Control		Lump Sum		\$2,359.75
16	Overhead Gantry Installation (includes foundation and base)	13	Each	\$12,762.83	\$165,916.75
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$234,585.51
18	Geotechnical Survey/Test		Lump Sum		\$157,954.92
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$587,722.85
20	Toll Zone Ambient Lighting		Lump Sum		\$117,320.72
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$440,926.59
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$413,537.80
23	Incidental Construction		Lump Sum		\$108,573.91
24	Tolling Zone Utilities				
25	Communications		Lump Sum		\$71,040.13
26	Electric		Lump Sum		\$217,171.18
27	Gas		Lump Sum		\$0.00
28	Miscellaneous (Installation/Construction)		Lump Sum		\$412,106.07
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$3,938,131.21</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		\$171,392.14
31	Design/Development		Lump Sum		\$464,541.29
32	Integration and Operation Testing		Lump Sum		\$424,218.03
33	Software License Fee		Lump Sum		\$0.00
34	Project Documentation (including As-builts)		Lump Sum		\$43,166.83
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,103,318.09</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$10,093,325.45</b>



**PRICING-HYPOTHETICAL PROJECT SEGMENT #1-3**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		<b>\$1,032,267.21</b>
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$1,032,267.21</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	29	Each	<del>\$30,142.50</del>	<b>\$874,132.57</b>
3	ETC Subsystem	44	Each	<del>\$14,218.82</del>	<b>625,628.12</b>
4	Automatic Vehicle Detection & Classification Subsystem	176	Each	<del>\$9,922.53</del>	<b>\$1,746,365.93</b>
5	Video Enforcement Subsystem	176	Each	<del>\$9,931.09</del>	<b>\$1,747,871.99</b>
6	Violation Signal	44	Each	<del>\$737.57</del>	<b>\$32,453.17</b>
7	Overhead Gantry Structure	29	Each	<del>\$133,164.91</del>	<b>\$3,861,782.32</b>
8	Communications Equipment		Lump Sum		<b>\$223,125.23</b>
9	Uninterruptible Power Supply (UPS)		Lump Sum		<b>\$242,578.17</b>
10	Backup Power Generator		Lump Sum		<b>\$414,375.42</b>
11	Maintenance On-Line Management System (MOMS)		Lump Sum		<b>\$13,020.70</b>
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		<b>\$50,112.26</b>
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$9,831,445.88</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		<b>\$2,255,195.67</b>
15	Traffic Control		Lump Sum		<b>\$2,363.50</b>
16	Overhead Gantry Installation (includes foundation and base)	29	Each	<del>\$12,717.36</del>	<b>\$368,803.45</b>
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		<b>\$553,760.86</b>
18	Geotechnical Survey/Test		Lump Sum		<b>\$158,206.40</b>
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		<b>\$1,313,425.21</b>
20	Toll Zone Ambient Lighting		Lump Sum		<b>\$258,516.50</b>
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		<b>\$972,742.33</b>
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		<b>\$905,769.07</b>
23	Incidental Construction		Lump Sum		<b>\$200,768.19</b>
24	Tolling Zone Utilities				
25	Communications		Lump Sum		<b>\$97,864.63</b>
26	Electric		Lump Sum		<b>\$467,021.06</b>
27	Gas		Lump Sum		<b>\$0.00</b>
28	Miscellaneous (Installation/Construction)		Lump Sum		<b>\$871,006.52</b>
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$8,425,443.39</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		<b>\$171,665.01</b>
31	Design/Development		Lump Sum		<b>\$737,059.92</b>
32	Integration and Operation Testing		Lump Sum		<b>\$424,893.42</b>
33	Software License Fee		Lump Sum		<b>\$0.00</b>
34	Project Documentation (including As-builts)		Lump Sum		<b>\$43,235.35</b>
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		<b>\$0.00</b>
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,376,853.70</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$20,666,010.18</b>

**PRICING-HYPOTHETICAL PROJECT SEGMENT #2-1**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		<del>\$698,395.50</del>
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$698,395.50</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	21	Each	<del>\$24,115.90</del>	<b>\$506,433.88</b>
3	ETC Subsystem	36	Each	<del>\$14,056.65</del>	<b>\$506,039.26</b>
4	Automatic Vehicle Detection & Classification Subsystem	120	Each	<del>\$9,906.76</del>	<b>\$1,188,811.36</b>
5	Video Enforcement Subsystem	120	Each	<del>\$9,915.30</del>	<b>\$1,189,836.59</b>
6	Violation Signal	36	Each	<del>\$736.40</del>	<b>\$26,510.39</b>
7	Overhead Gantry Structure	21	Each	<del>\$143,162.59</del>	<b>\$3,006,414.34</b>
8	Communications Equipment		Lump Sum		<del>\$123,053.35</del>
9	Uninterruptible Power Supply (UPS)		Lump Sum		<del>\$168,335.96</del>
10	Backup Power Generator		Lump Sum		<del>\$228,527.66</del>
11	Maintenance On-Line Management System (MOMS)		Lump Sum		<del>\$10,400.00</del>
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		<del>\$50,032.60</del>
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$7,004,395.39</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		<del>\$1,215,208.64</del>
15	Traffic Control		Lump Sum		<del>\$35,023.20</del>
16	Overhead Gantry Installation (includes foundation and base)	21	Each	<del>\$11,538.33</del>	<b>\$242,305.03</b>
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		<del>\$281,502.61</del>
18	Geotechnical Survey/Test		Lump Sum		<del>\$157,954.92</del>
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		<del>\$950,042.88</del>
20	Toll Zone Ambient Lighting		Lump Sum		<del>\$175,981.08</del>
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		<del>\$229,649.88</del>
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		<del>\$356,497.14</del>
23	Incidental Construction		Lump Sum		<del>\$163,980.82</del>
24	Tolling Zone Utilities				
25	Communications		Lump Sum		<del>\$609,132.69</del>
26	Electric		Lump Sum		<del>\$374,064.87</del>
27	Gas		Lump Sum		<del>\$0.00</del>
28	Miscellaneous (Installation/Construction)		Lump Sum		<del>\$694,076.65</del>
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$5,485,420.30</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		<del>\$171,392.14</del>
31	Design/Development		Lump Sum		<del>\$552,071.03</del>
32	Integration and Operation Testing		Lump Sum		<del>\$424,218.03</del>
33	Software License Fee		Lump Sum		<del>\$0.00</del>
34	Project Documentation (including As-builts)		Lump Sum		<del>\$43,166.63</del>
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		<del>\$0.00</del>
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,190,847.83</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$14,379,059.02</b>

**PRICING-HYPOTHETICAL PROJECT SEGMENT #2-2**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		<b>\$1,335,721.46</b>
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$1,335,721.46</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	44	Each	<del>\$23,255</del>	<b>\$1,023,231.14</b>
3	ETC Subsystem	68	Each	<del>\$14,174</del>	<b>\$963,835.52</b>
4	Automatic Vehicle Detection & Classification Subsystem	236	Each	<del>\$9,907</del>	<b>\$2,337,995.68</b>
5	Video Enforcement Subsystem	238	Each	<del>\$9,915</del>	<b>\$2,340,011.96</b>
6	Violation Signal	68	Each	<del>\$736</del>	<b>\$50,075.18</b>
7	Overhead Gantry Structure	44	Each	<del>\$123,982</del>	<b>\$5,454,315.15</b>
8	Communications Equipment		Lump Sum		<b>\$277,093</b>
9	Uninterruptible Power Supply (UPS)		Lump Sum		<b>\$321,846</b>
10	Backup Power Generator		Lump Sum		<b>\$514,602</b>
11	Maintenance On-Line Management System (MOMS)		Lump Sum		<b>\$15,600</b>
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		<b>\$50,033</b>
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$13,368,637.98</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		<b>\$2,473,616</b>
15	Traffic Control		Lump Sum		<b>\$59,379</b>
16	Overhead Gantry Installation (includes foundation and base)	44	Each	<del>\$11,518</del>	<b>\$506,802.38</b>
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		<b>\$586,464</b>
18	Geotechnical Survey/Test		Lump Sum		<b>\$157,955</b>
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		<b>\$1,990,575</b>
20	Toll Zone Ambient Lighting		Lump Sum		<b>\$346,096</b>
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		<b>\$464,396</b>
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		<b>\$744,804</b>
23	Incidental Construction		Lump Sum		<b>\$304,397</b>
24	Tolling Zone Utilities				
25	Communications		Lump Sum		<b>\$1,116,142</b>
26	Electric		Lump Sum		<b>\$753,348</b>
27	Gas		Lump Sum		
28	Miscellaneous (Installation/Construction)		Lump Sum		<b>\$1,071,450</b>
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$10,575,422.93</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		<b>\$171,392</b>
31	Design/Development		Lump Sum		<b>\$860,829</b>
32	Integration and Operation Testing		Lump Sum		<b>\$424,218</b>
33	Software License Fee		Lump Sum		
34	Project Documentation (including As-builts)		Lump Sum		<b>\$43,167</b>
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,499,605.59</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$26,779,387.95</b>

**PRICING-HYPOTHETICAL PROJECT SEGMENT #2-3**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		<b>\$2,621,525.53</b>
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$2,621,525.53</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	89	Each	<b>\$22,878</b>	<b>\$2,036,124.99</b>
3	ETC Subsystem	134	Each	<b>\$15,228</b>	<b>\$1,906,526.10</b>
4	Automatic Vehicle Detection & Classification Subsystem	472	Each	<b>\$9,922</b>	<b>\$4,683,303.15</b>
5	Video Enforcement Subsystem	472	Each	<b>\$9,931</b>	<b>\$4,687,342.02</b>
6	Violation Signal	134	Each	<b>\$738</b>	<b>\$98,831.86</b>
7	Overhead Gantry Structure	89	Each	<b>\$124,918</b>	<b>\$11,117,661.96</b>
8	Communications Equipment		Lump Sum		<b>\$513,673</b>
9	Uninterruptible Power Supply (UPS)		Lump Sum		<b>\$688,197</b>
10	Backup Power Generator		Lump Sum		<b>\$953,964</b>
11	Maintenance On-Line Management System (MOMS)		Lump Sum		<b>\$22,135</b>
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		<b>\$50,113</b>
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$26,757,870.16</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		<b>\$5,155,242</b>
15	Traffic Control		Lump Sum		<b>\$72,187</b>
16	Overhead Gantry Installation (includes foundation and base)	89	Each	<b>\$11,566</b>	<b>\$1,029,403.31</b>
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		<b>\$1,198,257</b>
18	Geotechnical Survey/Test		Lump Sum		<b>\$158,202</b>
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		<b>\$4,032,659</b>
20	Toll Zone Ambient Lighting		Lump Sum		<b>\$693,275</b>
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		<b>\$941,550</b>
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		<b>\$1,515,377</b>
23	Incidental Construction		Lump Sum		<b>\$569,532</b>
24	Tolling Zone Utilities				
25	Communications		Lump Sum		<b>\$2,160,322</b>
26	Electric		Lump Sum		<b>\$1,504,462</b>
27	Gas		Lump Sum		<b>-</b>
28	Miscellaneous (Installation/Construction)		Lump Sum		<b>\$1,981,387</b>
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$21,011,834.79</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		<b>\$171,660</b>
31	Design/Development		Lump Sum		<b>\$1,451,987</b>
32	Integration and Operation Testing		Lump Sum		<b>\$424,881</b>
33	Software License Fee		Lump Sum		<b>-</b>
34	Project Documentation (including As-builts)		Lump Sum		<b>\$43,234</b>
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		<b>-</b>
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$2,091,763.04</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$52,482,993.52</b>

**PRICING-HYPOTHETICAL PROJECT SEGMENT #3-1**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		<b>\$567,523.38</b>
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$567,523.38</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	11	Each	\$38,871.32	\$427,584.56
3	ETC Subsystem	46	Each	\$13,422.50	\$617,434.96
4	Automatic Vehicle Detection & Classification Subsystem	128	Each	\$9,908.76	\$1,268,065.46
5	Video Enforcement Subsystem	128	Each	\$9,915.30	\$1,269,159.03
6	Violation Signal	46	Each	\$736.40	\$33,874.39
7	Overhead Gantry Structure	11	Each	\$232,401.59	\$2,556,417.44
8	Communications Equipment		Lump Sum		\$100,610.02
9	Uninterruptible Power Supply (UPS)		Lump Sum		\$117,893.19
10	Backup Power Generator		Lump Sum		\$186,847.18
11	Maintenance On-Line Management System (MOMS)		Lump Sum		\$10,400.00
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$50,032.60
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$6,638,318.83</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		\$918,783.76
15	Traffic Control		Lump Sum		\$32,734.13
16	Overhead Gantry Installation (includes foundation and base)	11	Each	\$13,065.86	\$143,724.44
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$391,312.79
18	Geotechnical Survey/Test		Lump Sum		\$157,954.92
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$497,463.60
20	Toll Zone Ambient Lighting		Lump Sum		\$187,713.15
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$140,869.19
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$227,445.39
23	Incidental Construction		Lump Sum		\$140,484.59
24	Tolling Zone Utilities				
25	Communications		Lump Sum		\$391,588.75
26	Electric		Lump Sum		\$235,404.18
27	Gas		Lump Sum		\$0.00
28	Miscellaneous (Installation/Construction)		Lump Sum		\$494,655.36
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$3,960,134.25</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		\$171,392.14
31	Design/Development		Lump Sum		\$423,581.64
32	Integration and Operation Testing		Lump Sum		\$424,218.03
33	Software License Fee		Lump Sum		\$0.00
34	Project Documentation (including As-builts)		Lump Sum		\$43,168.63
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,062,358.44</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$12,228,334.90</b>

# PRICING-HYPOTHETICAL PROJECT SEGMENT #3-2

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		\$824,911.41
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$824,911.41</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	16	Each	\$39,339.82	\$629,437.05
3	ETC Subsystem	67	Each	\$13,421.90	\$899,267.39
4	Automatic Vehicle Detection & Classification Subsystem	188	Each	\$9,906.76	\$1,862,471.14
5	Video Enforcement Subsystem	188	Each	\$9,915.30	\$1,864,077.33
6	Violation Signal	67	Each	\$736.40	\$49,338.78
7	Overhead Gantry Structure	16	Each	\$239,891.65	\$3,838,266.44
8	Communications Equipment		Lump Sum		\$151,063.83
9	Uninterruptible Power Supply (UPS)		Lump Sum		\$176,234.22
10	Backup Power Generator		Lump Sum		\$280,547.12
11	Maintenance On-Line Management System (MOMS)		Lump Sum		\$13,000.00
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		\$50,032.60
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$9,813,735.90</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		\$1,357,923.16
15	Traffic Control		Lump Sum		\$35,546.59
16	Overhead Gantry Installation (includes foundation and base)	16	Each	\$13,224.14	\$221,586.20
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		\$541,690.33
18	Geotechnical Survey/Test		Lump Sum		\$157,964.92
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		\$723,556.60
20	Toll Zone Ambient Lighting		Lump Sum		\$275,703.68
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		\$189,806.15
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		\$336,965.21
23	Incidental Construction		Lump Sum		\$183,162.51
24	Tolling Zone Utilities				
25	Communications		Lump Sum		\$491,631.39
26	Electric		Lump Sum		\$308,206.78
27	Gas		Lump Sum		\$0.00
28	Miscellaneous (Installation/Construction)		Lump Sum		\$802,479.71
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$6,616,213.23</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		171,392.14
31	Design/Development		Lump Sum		\$481,862.06
32	Integration and Operation Testing		Lump Sum		\$424,218.03
33	Software License Fee		Lump Sum		\$0.00
34	Project Documentation (including As-builts)		Lump Sum		\$43,166.63
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		\$0.00
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,120,638.86</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$17,375,499.41</b>



# PRICING-HYPOTHETICAL PROJECT SEGMENT #3-3

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Mobilization</b>				
1	Mobilization (Not to exceed 5% of Total Capital Price)		Lump Sum		<del>\$2,515,122.77</del>
	<b>Subtotal – Mobilization</b>		<b>Subtotal A</b>		<b>\$2,515,122.77</b>
<b>B</b>	<b>Toll Zone Equipment/MOMS</b>				
2	Tolling Zone Controller	79	Each	<del>\$25,471.13</del>	\$2,012,219.32
3	ETC Subsystem	154	Each	<del>\$13,927.04</del>	\$2,144,764.58
4	Automatic Vehicle Detection & Classification Subsystem	504	Each	<del>\$9,906.76</del>	\$4,993,007.72
5	Video Enforcement Subsystem	504	Each	<del>\$9,915.30</del>	\$4,997,313.68
6	Violation Signal	154	Each	<del>\$736.40</del>	\$113,405.55
7	Overhead Gantry Structure	79	Each	<del>\$144,166.99</del>	\$11,388,401.96
8	Communications Equipment		Lump Sum		<del>\$820,223.90</del>
9	Uninterruptible Power Supply (UPS)		Lump Sum		<del>\$650,384.45</del>
10	Backup Power Generator		Lump Sum		<del>\$966,130.10</del>
11	Maintenance On-Line Management System (MOMS)		Lump Sum		<del>\$23,400.00</del>
12	Miscellaneous (Toll Zone Equipment/MOMS)		Lump Sum		<del>\$50,032.60</del>
13	<b>Subtotal – Toll Zone Equipment</b>		<b>Subtotal B</b>		<b>\$27,859,283.85</b>
<b>C</b>	<b>Installation/Construction</b>				
14	Tolling Zone Equipment Installation		Lump Sum		<del>\$4,968,131.37</del>
15	Traffic Control		Lump Sum		<del>\$61,166.93</del>
16	Overhead Gantry Installation (includes foundation and base)	<del>\$79.00</del>	Each	<del>\$11,840.58</del>	<b>\$935,406.05</b>
17	Pavement/Tolling Zone Apron (includes striping, guardrail, delineator posts, pavement markers)		Lump Sum		<del>\$992,763.09</del>
18	Geotechnical Survey/Test		Lump Sum		<del>\$157,954.92</del>
19	"Pillbox" Housing Structure/NEMA 4X Enclosures		Lump Sum		<del>\$3,573,718.02</del>
20	Toll Zone Ambient Lighting		Lump Sum		<del>\$739,120.52</del>
21	Toll Zone Signing (includes signs, structures and installation)		Lump Sum		<del>\$557,917.01</del>
22	Advance Toll Information Signing (includes signs, structures and installation)		Lump Sum		<del>\$1,420,998.05</del>
23	Incidental Construction		Lump Sum		<del>\$558,973.66</del>
24	Tolling Zone Utilities				
25	Communications		Lump Sum		<del>\$1,576,016.48</del>
26	Electric		Lump Sum		<del>\$1,103,253.62</del>
27	Gas		Lump Sum		<del>\$0.00</del>
28	Miscellaneous (Installation/Construction)		Lump Sum		<del>\$1,966,530.70</del>
29	<b>Subtotal – Installation/Construction</b>		<b>Subtotal C</b>		<b>\$18,598,950.42</b>
<b>D</b>	<b>Professional Services/Contract Management</b>				
30	Project Management (including QA/QC for Professional Services, Construction, System Development, Installation and Deployment)		Lump Sum		<del>\$171,392.14</del>
31	Design/Development		Lump Sum		<del>\$1,162,015.33</del>
32	Integration and Operation Testing		Lump Sum		<del>\$424,218.03</del>
33	Software License Fee		Lump Sum		<del>\$0.00</del>
34	Project Documentation (including As-builts)		Lump Sum		<del>\$43,166.63</del>
35	Miscellaneous (Professional Services/Contract Management)		Lump Sum		<del>\$0.00</del>
36	<b>Subtotal – Professional Services/Contract Management</b>		<b>Subtotal D</b>		<b>\$1,800,792.13</b>
37	<b>TOTAL CAPITAL PRICE (Subtotals A, B, C, D)</b>				<b>\$50,774,149.16</b>

**EXHIBIT U-3**

**PILOT SYSTEM MAINTENANCE PRICES**

**[See Attached]**



MAINTENANCE PRICING-PILOT SYSTEM #1

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
A	Roadway Segment Maintenance (8 yrs)				
1	Tolling Zone Maintenance	96	Per Month	\$32,124.85	\$3,083,985.79
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	<b>Subtotal Maintenance</b>		<b>Subtotal</b>		<b>\$3,538,985.79</b>
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$3,538,985.79</b>

MAINTENANCE PRICING-PILOT SYSTEM #2

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
A	Roadway Segment Maintenance (8 yrs)				
1	Tolling Zone Maintenance	96	Per Month	\$32,591.78	\$3,128,810.56
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	Subtotal Maintenance		Subtotal		\$3,583,810.56
5	TOTAL MAINTENANCE PRICE		Total		\$3,583,810.56

**MAINTENANCE PRICING-PILOT SYSTEM #3**

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
A	Roadway Segment Maintenance (8 yrs)				
1	Tolling Zone Maintenance	96	Per Month	\$33,807.04	\$3,245,475.39
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	Subtotal Maintenance		Subtotal		\$3,700,475.39
5	TOTAL MAINTENANCE PRICE		Total		\$3,700,475.39

**EXHIBIT U-4**

**HYPOTHETICAL PROJECT SEGMENT MAINTENANCE PRICES**

**[See Attached]**

MAINTENANCE PRICING-HYPOTHETICAL PROJECT SEGMENT #1-1

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	<del>\$32,654.54</del>	\$3,134,836.08
2	Annual Performance Audit	96	Per Month	<del>\$2,916.97</del>	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		<del>\$175,000.00</del>
4	<b>Subtotal Maintenance</b>		<b>Subtotal</b>		<b>\$3,589,836.08</b>
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$3,589,836.08</b>

MAINTENANCE PRICING-HYPOTHETICAL PROJECT SEGMENT #1-2

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	\$33,910.82	\$3,255,439.02
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	<b>Subtotal Maintenance</b>		<b>Subtotal</b>		<b>\$3,710,439.02</b>
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$3,710,439.02</b>

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	\$68,287.01	\$6,555,552.66
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$25,000.00
4	Subtotal Maintenance		Subtotal		\$7,010,552.66
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$7,010,552.66</b>

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	\$66,417.61	\$6,376,090.90
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	<b>Subtotal Maintenance</b>		<b>Subtotal</b>		<b>\$6,831,090.90</b>
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$6,831,090.90</b>



**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
A	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	\$70,359.35	\$6,754,497.96
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	<b>Subtotal Maintenance</b>		<b>Subtotal</b>		<b>\$7,209,497.96</b>
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$7,209,497.96</b>

MAINTENANCE PRICING-HYPOTHETICAL PROJECT SEGMENT #2-3

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
A	Maintenance (8 yrs)				
1	Tolling Zone Maintenance	96	Per Month	\$109,345.49	\$10,497,166.88
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	Subtotal Maintenance		Subtotal		\$10,952,166.88
5	TOTAL MAINTENANCE PRICE		Total		\$10,952,166.88

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
A	Maintenance (8 yrs)				
1	Tolling Zone Maintenance	96	Per Month	\$34,969.53	\$3,357,075.33
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	Subtotal Maintenance		Subtotal		\$3,812,075.33
5	TOTAL MAINTENANCE PRICE		Total		\$3,812,075.33

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	\$67,533.17	\$6,521,584.36
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	<b>Subtotal Maintenance</b>		<b>Subtotal</b>		<b>\$6,976,584.36</b>
5	<b>TOTAL MAINTENANCE PRICE</b>		<b>Total</b>		<b>\$6,976,584.36</b>

MAINTENANCE PRICING-HYPOTHETICAL PROJECT SEGMENT #3-3

**MAINTENANCE COST IN YEAR 2006 DOLLARS**

ITEM / LINE	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
<b>A</b>	<b>Maintenance (8 yrs)</b>				
1	Tolling Zone Maintenance	96	Per Month	\$141,006.86	\$13,536,658.33
2	Annual Performance Audit	96	Per Month	\$2,916.97	\$280,000.00
3	End of Term Maintenance Activities		Lump Sum		\$175,000.00
4	Subtotal Maintenance		Subtotal		\$13,991,658.33
5	TOTAL MAINTENANCE PRICE		Total		\$13,991,658.33

## Exhibit U-5

### METHODOLOGIES FOR DETERMINING LIQUIDATED DAMAGES

Liquidated Damages shall be calculated with reference to TxDOT's most current traffic and revenue study/data for the applicable Project Segment as the difference between projected annual gross revenue and projected annual operations costs, divided by the number of revenue days per year used in the study/data plus a \$3,000.00 per day facility service cost (which is intended to cover TxDOT's anticipated additional internal overhead and administrative costs, as well as anticipated additional outside consultant costs):

$$\frac{[(\text{Projected Annual Gross Revenue}) - (\text{Projected Annual Operations Costs}) / \text{Revenue Days per year} + \$3,000.00]}{}$$

## **EXHIBIT U-6**

### **PILOT SYSTEM AND HYPOTHETICAL PROJECT SEGMENT SCENARIOS** **PROJECT SCHEDULES**

[see attached as "Appendix D – Project Schedules"]

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**APPENDIX D**  
**PROJECT SCHEDULES**

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1. Schedule for Pilot System 1

Raytheon Proprietary/  
Competition Sensitive

ID	Task Name	Duration	Start	Finish	Float	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
40	Construction Design	50 d	10/1/05	12/9/05	0 d																						
41	Review existing data	5 d	10/3/05	10/7/05	0 d																						
42	Review Gentry and other Technical data	10 d	10/3/05	10/14/05	0 d																						
43	Utility Coordination & Connections	35 d	10/3/05	11/18/05	10 d																						
44	Pavement/Roadway design	20 d	10/7/05	11/1/05	35 d																						
45	Drainage Design	20 d	10/7/05	11/1/05	44 d																						
46	30% Submittal and Review	0 d	10/25/05	10/25/05	39 d																						
47	Utility Connection Details	20 d	10/19/05	11/15/05	10 d																						
48	Signing, Pavement, Markings & Illumination	20 d	10/25/05	11/25/05	0 d																						
49	60% Submittal and Review	0 d	11/1/05	11/1/05	0 d																						
50	Gentry Foundation and Structure Design	25 d	10/17/05	11/18/05	100 d																						
51	Traffic Control	15 d	10/26/05	11/15/05	100 d																						
52	SWAP Plans	15 d	10/31/05	11/15/05	100 d																						
53	90% Submittal and Review	0 d	11/18/05	11/18/05	100 d																						
54	PS&E Sheet Development	25 d	10/17/05	11/18/05	99 d																						
55	100% Submittal	0 d	11/25/05	11/25/05	95 d																						
56	TxDOT construction design approval	0 d	12/9/05	12/9/05	95 d																						
57	Toll Collection Procurement	90 d	10/10/06	2/10/06	0 d																						
58	Place Orders	15 d	10/10/05	10/28/05	0 d																						
59	Material Receipt and C/O	80 d	10/24/05	2/10/06	0 d																						
60	Infrastructure Procurement	80 d	11/14/05	3/3/06	0 d																						
61	Place Orders	20 d	11/14/05	12/9/05	0 d																						
62	Material Receipt and C/O	60 d	12/12/05	3/3/06	0 d																						
63	Site Installation, Integration & Test	115 d	1/18/06	6/23/06	0 d																						
64	Site 1 Gentry IAT	75 d	1/18/06	4/28/06	0 d																						
65	Site 1 Gentry Infrastructure Construction	25 d	1/18/06	2/17/06	0 d																						
66	Site 1 Gentry TCS Installation	25 d	2/27/06	3/31/06	0 d																						
67	Site 1 Gentry Integration	15 d	4/3/06	4/21/06	0 d																						
68	Site 1 Gentry Test	5 d	4/24/06	4/28/06	0 d																						
69	Site 1 Gentry Complete (Payment Milesto)	0 d	4/28/06	4/28/06	0 d																						
70	Site 2 IAT	65 d	2/17/06	5/19/06	0 d																						
71	Site 2 Infrastructure Construction	25 d	2/17/06	3/24/06	0 d																						
72	Site 2 Gentry TCS Installation	20 d	3/31/06	4/28/06	0 d																						
73	Site 2 Gentry Integration & Test	15 d	5/1/06	5/19/06	15 d																						
74	Site 2 Gentry Complete (Payment Milesto)	0 d	5/19/06	5/19/06	25 d																						

Volume 4 - Appendices  
Appendix D – Project Schedules

Raytheon

ID	Task Name	Duration	Start	Finish	Float	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
75	<b>Site 3 I&amp;T</b>	55 d	3/24/06	6/8/06	0 d																						
76	Site 3 Infrastructure Construction	20 d	3/24/06	4/21/06	0 d																						
77	Site 3 Gantry TCS Installation	20 d	4/28/06	5/26/06	0 d																						
78	Site 3 Gantry Integration & Test	10 d	5/29/06	6/9/06	0 d																						
79	Site 3 Gantry Complete (Payment Milestone)	0 d	6/9/06	6/9/06	10 d																						
80	<b>Site 4 I&amp;T</b>	40 d	4/21/06	6/6/06	0 d																						
81	Site 4 Infrastructure Construction	20 d	4/21/06	5/19/06	0 d																						
82	Site 4 Gantry TCS Installation	20 d	5/5/06	6/2/06	0 d																						
83	Site 4 Gantry Integration & Test	10 d	6/2/06	6/16/06	0 d																						
84	Site 4 Gantry Complete (Payment Milestone)	0 d	6/16/06	6/16/06	5 d																						
85	<b>Site 5 I&amp;T</b>	40 d	4/28/06	6/23/06	0 d																						
86	Site 5 Infrastructure Construction	20 d	4/28/06	5/26/06	0 d																						
87	Site 5 Gantry TCS Installation	10 d	5/26/06	6/9/06	0 d																						
88	Site 5 Gantry Integration & Test	10 d	6/9/06	6/23/06	0 d																						
89	Site 5 Gantry Complete (Payment Milestone)	0 d	6/23/06	6/23/06	0 d																						
90	<b>Pilot System Approval Integration &amp; Test</b>	60 d	6/1/06	7/7/06	0 d																						
91	Pilot System Approval Integration	40 d	6/1/06	6/23/06	0 d																						
92	Pilot System Approval Test	10 d	6/26/06	7/7/06	0 d																						
93	Pilot System Approval Self-off (280 days, 9 Mth)	0 d	7/7/06	7/7/06	0 d																						
94	System Acceptance (Payment Milestone)	0 d	7/7/06	7/7/06	0 d																						
95	<b>Pilot System Commissioning</b>	30 d	7/10/06	8/18/06	0 d																						
96	Pilot System Commissioning Integration	30 d	7/10/06	8/18/06	0 d																						
97	Pilot System Commissioning complete	0 d	8/18/06	8/18/06	0 d																						
98	<b>Pilot System Operational Test</b>	60 d	8/21/06	11/10/06	0 d																						
99	Pilot System Operational Test (3 month test)	60 d	8/21/06	11/10/06	0 d																						
100	Final Acceptance (Payment Milestone)	0 d	11/10/06	11/10/06	0 d																						

2. Schedule for Hypothetical Project Segment 1-1

ID	Task Name	Duration	SRT	Finish	Float	M2	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
1	TrOOT Loop 48 Hypothetical Project 1-1	263 d	10/3/05	10/4/05	0 d																					
2	Notice to Proceed	0 d	10/3/05	10/3/05	0 d																					
3	Program Planning and PDR	60 d	10/3/05	12/3/05	0 d																					
4	Schedule Baseline	60 d	10/3/05	12/3/05	0 d																					
5	Cost Baseline	60 d	10/3/05	12/3/05	0 d																					
6	Internal Startup Review (Gate 5) Prep & Review	45 d	10/3/05	12/3/05	0 d																					
7	Preliminary Design Review	0 d	12/5/05	12/5/05	100 d																					
8	TrOOT approval of Preliminary Design Review	0 d	12/16/05	12/16/05	100 d																					
9	System Configuration	110 d	10/3/05	3/3/06	23 d																					
10	System Engineering	60 d	10/3/05	12/3/05	23 d																					
11	MONS Configuration	20 d	10/3/05	10/28/05	130 d																					
12	RCU Configuration	20 d	10/3/05	10/28/05	130 d																					
13	Hardware adaptation	20 d	10/3/05	11/25/05	110 d																					
14	Cable Diagrams	20 d	11/7/05	12/2/05	105 d																					
15	Detail Design Review	0 d	12/16/05	12/16/05	100 d																					
16	TrOOT approval of Detailed Design Review	0 d	12/23/05	12/23/05	100 d																					
17	Factory Configuration & Test	55 d	11/21/05	2/3/06	23 d																					
18	MONS Configuration Implementation	20 d	11/21/05	12/16/05	38 d																					
19	RCU Configuration Implementation	20 d	11/21/05	12/16/05	38 d																					
20	Hardware adaptation	20 d	11/28/05	12/23/05	110 d																					
21	Cable Diagrams	20 d	12/5/05	12/30/05	105 d																					
22	Configuration Integration & Test	20 d	12/16/05	12/7/06	105 d																					
23	Configuration Integration complete (Miles)	0 d	2/3/06	2/3/06	100 d																					
24	Project configuration	20 d	2/3/06	3/3/06	23 d																					
25	Project configuration	20 d	2/3/06	3/3/06	100 d																					
26	Construction Design	75 d	10/3/05	1/13/06	0 d																					
27	Review existing data	5 d	10/3/05	10/7/05	0 d																					
28	Review Gantry and other Technical data	10 d	10/3/05	10/14/05	0 d																					
29	Utility Coordination & Connections	60 d	10/3/05	12/3/05	5 d																					
30	Pavement/Roadway design	60 d	10/10/05	12/30/05	0 d																					
31	Drainage Design	55 d	10/17/05	12/30/05	0 d																					
32	30% Submittal and Review	0 d	10/28/05	10/28/05	10 d																					
33	Utility Connection Details	30 d	10/19/05	11/29/05	5 d																					
34	Signing, Pavement, Markings & Illumination	20 d	10/31/05	11/25/05	0 d																					
35	60% Submittal and Review	0 d	11/11/05	11/11/05	0 d																					
36	Gantry Foundation and Structure Design	55 d	10/17/05	12/30/05	0 d																					
37	Traffic Control	40 d	10/28/05	12/30/05	0 d																					
38	SWOP Plans	45 d	10/31/05	12/30/05	0 d																					
39	90% Submittal and Review	0 d	12/30/05	12/30/05	0 d																					
40	PS&E Sheet Development	55 d	10/10/05	12/28/05	0 d																					
41	100% Submittal	0 d	12/30/05	12/30/05	0 d																					
42	TrOOT construction design approval	0 d	1/13/06	1/13/06	0 d																					

ID	Task Name	Duration	Start	Finish	Float	M2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
43	Toll Collection Procurement	110 d	10/10/06	3/10/06	23 d																						
44	Place Orders	20 d	10/10/06	11/10/06	23 d																						
45	Material Receipt and C/O	100 d	10/24/06	3/10/06	23 d																						
46	Infrastructure Procurement	106 d	11/14/06	4/7/06	0 d																						
47	Place Orders	30 d	11/14/06	12/23/06	0 d																						
48	Material Receipt and C/O	85 d	12/12/06	4/7/06	0 d																						
49	Site Installation, Integration & Test	93 d	1/9/06	5/17/06	0 d																						
50	Site 1 Gantry I&T	60 d	1/9/06	3/31/06	0 d																						
51	Site 1 Gantry Infrastructure Construction	20 d	1/9/06	2/3/06	0 d																						
52	Site 1 Gantry TCS Installation	35 d	2/6/06	3/24/06	0 d																						
53	Site 1 Gantry Integration	5 d	3/27/06	3/31/06	0 d																						
54	Site 1 Gantry Complete (Payment Milestone)	0 d	3/31/06	3/31/06	0 d																						
55	Site 2 Gantry I&T	35 d	2/23/06	4/12/06	0 d																						
56	Site 3 Gantry I&T	35 d	2/23/06	4/12/06	0 d																						
57	Site 4 Gantry I&T	35 d	2/23/06	4/12/06	0 d																						
58	Site 5 Gantry I&T	35 d	2/23/06	4/12/06	0 d																						
59	Site 6 Gantry I&T	35 d	3/20/06	5/17/06	0 d																						
60	Site 7 Gantry I&T	35 d	3/20/06	5/17/06	0 d																						
61	Site 8 Gantry I&T	35 d	3/20/06	5/17/06	0 d																						
62	Project Segment Approval Integration & Test	40 d	4/8/06	5/31/06	0 d																						
63	Project Segment Approval Integration	30 d	4/8/06	5/17/06	0 d																						
64	Project Segment Approval Test	10 d	5/18/06	5/31/06	0 d																						
65	Project Segment Approval Self-off (240 days, 6	0 d	5/31/06	5/31/06	0 d																						
66	System Acceptance (Payment Milestone)	0 d	5/31/06	5/31/06	0 d																						
67	Project Segment Commissioning	30 d	6/1/06	7/12/06	0 d																						
68	Project Segment Commissioning Integration	30 d	6/1/06	7/12/06	0 d																						
69	Project Segment Commissioning complete	0 d	7/12/06	7/12/06	0 d																						
70	Project Segment Operational Test	60 d	7/13/06	10/4/06	0 d																						
71	Project Segment Operational Test (3 month le	60 d	7/13/06	10/4/06	0 d																						
72	Final Acceptance (Payment Milestone)	0 d	10/4/06	10/4/06	0 d																						



3. Schedule for Hypothetical Project Segment 1-2

ID	Task Name	Duration	Start	Finish	Float
1	TxDOT Loop 45 Hypothetical Project 1-2	305 d	10/3/05	12/1/06	0 d
2	Notice to Proceed	0 d	10/3/05	10/3/05	0 d
3	Program Planning and PDR	60 d	10/3/05	12/3/05	0 d
4	Schedule Baseline	60 d	10/3/05	12/3/05	0 d
5	Cost Baseline	60 d	10/3/05	12/3/05	0 d
6	Internal Startup Review (Gate 5) Prep & Review	45 d	10/3/05	12/3/05	0 d
7	Preliminary Design Review	0 d	12/9/05	12/9/05	100 d
8	TxDOT approval of Preliminary Design Review	0 d	12/16/05	12/16/05	100 d
9	System Configuration	110 d	10/3/05	3/3/06	65 d
10	System Engineering	60 d	10/3/05	12/3/05	65 d
11	MOIS Configuration	20 d	10/3/05	10/28/05	130 d
12	RCU Configuration	20 d	10/3/05	10/28/05	130 d
13	Hardware adaptation	20 d	10/3/05	11/28/05	110 d
14	Cable Diagrams	20 d	11/7/05	12/2/05	105 d
15	Detail Design Review	0 d	12/16/05	12/16/05	100 d
16	TxDOT approval of Detailed Design Review	0 d	12/23/05	12/23/05	100 d
17	Factory Configuration & Test	65 d	11/21/05	2/3/06	65 d
18	MOIS Configuration Implementation	20 d	11/21/05	12/16/05	80 d
19	RCU Configuration Implementation	20 d	11/21/05	12/16/05	80 d
20	Hardware adaptation	20 d	11/28/05	12/23/05	110 d
21	Cable Diagrams	20 d	12/5/05	12/30/05	105 d
22	Configuration Integration & Test	20 d	12/16/05	12/7/06	105 d
23	Configuration integration complete (Mile)	0 d	2/3/06	2/3/06	100 d
24	Project configuration	20 d	2/3/06	3/3/06	65 d
25	Construction Design	75 d	10/3/05	1/13/06	0 d
26	Review existing data	5 d	10/3/05	10/7/05	0 d
27	Review Gantry and other Technical data	10 d	10/3/05	10/14/05	0 d
28	Utility Coordination & Connections	60 d	10/3/05	12/3/05	5 d
29	Pavement/Roadway design	60 d	10/3/05	12/3/05	5 d
30	Drainage Design	55 d	10/17/05	12/3/05	5 d
31	30% Submittal and Review	0 d	10/28/05	10/28/05	10 d
32	Utility Connection Details	30 d	10/19/05	11/29/05	5 d
33	Signing, Pavement, Markings & Illumination	20 d	10/31/05	11/20/05	0 d
34	60% Submittal and Review	0 d	11/1/05	11/1/05	0 d
35	Gantry Foundation and Structure Design	55 d	10/17/05	12/3/05	5 d
36	Traffic Control	40 d	10/26/05	12/20/05	5 d
37	SV&P Plans	45 d	10/31/05	12/30/05	5 d
38	90% Submittal and Review	0 d	12/30/05	12/30/05	5 d
39	PS&E Sheet Development	59 d	10/10/05	12/29/05	5 d
40	100% Submittal	0 d	12/30/05	12/30/05	5 d
41	TxDOT construction design approval	0 d	1/13/06	1/13/06	15 d
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Volume 4 - Appendices  
Appendix D - Project Schedules

Raytheon

ID	Task Name	Duration	Start	Finish	Float	M-1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20	M21
43	Yell Collection Procurement	110 d	10/1/06	3/6/08	26 d																					
44	Place Orders	20 d	10/1/06	1/14/07	25 d																					
45	Material Receipt and C/O	100 d	10/2/06	3/6/08	25 d																					
46	Infrastructure Procurement	108 d	11/1/06	4/7/08	0 d																					
47	Place Orders	30 d	11/1/06	12/23/06	0 d																					
48	Material Receipt and C/O	55 d	12/12/06	4/7/08	0 d																					
49	Site Installation, Integration & Test	135 d	1/8/08	7/14/08	0 d																					
50	Site 1 Gantry I&T	60 d	1/8/08	3/31/08	0 d																					
51	Site 1 Gantry Infrastructure Construction	20 d	1/8/08	2/6/08	0 d																					
52	Site 1 Gantry TCS Installation	35 d	2/6/08	3/24/08	0 d																					
53	Site 1 Gantry Integration	5 d	3/27/08	3/31/08	0 d																					
54	Site 1 Gantry Complete (Payment Milestone)	0 d	3/31/08	3/31/08	0 d																					
55	Site 2 Gantry I&T	40 d	3/13/08	5/5/08	0 d																					
56	Site 3 Gantry I&T	40 d	3/13/08	5/5/08	0 d																					
57	Site 4 Gantry I&T	40 d	3/13/08	5/5/08	0 d																					
58	Site 5 Gantry I&T	40 d	3/13/08	5/5/08	0 d																					
59	Site 6 Gantry I&T	40 d	4/17/08	6/9/08	0 d																					
60	Site 7 Gantry I&T	40 d	4/17/08	6/9/08	0 d																					
61	Site 8 Gantry I&T	40 d	4/17/08	6/9/08	0 d																					
62	Site 9 Gantry I&T	40 d	4/17/08	6/9/08	0 d																					
63	Site 10 Gantry I&T	40 d	4/17/08	6/9/08	0 d																					
64	Site 11 Gantry I&T	40 d	5/22/08	7/14/08	0 d																					
65	Site 12 Gantry I&T	40 d	5/22/08	7/14/08	0 d																					
66	Site 13 Gantry I&T	40 d	5/22/08	7/14/08	0 d																					
67	Project Segment Approval Integration & Test	40 d	6/5/08	7/28/08	0 d																					
68	Project Segment Approval Integration	30 d	6/5/08	7/14/08	0 d																					
69	Project Segment Approval Test	10 d	7/17/08	7/28/08	0 d																					
70	Project Segment Approval Self-off (200 days, 1 Mth's ARO)	0 d	7/28/08	7/28/08	0 d																					
71	System Acceptance (Payment Milestone)	0 d	7/28/08	7/28/08	0 d																					
72	Project Segment Commissioning	30 d	7/31/08	9/8/08	0 d																					
73	Project Segment Commissioning Integration	30 d	7/31/08	9/8/08	0 d																					
74	Project Segment Commissioning complete	0 d	9/8/08	9/8/08	0 d																					
75	Project Segment Operational Test	60 d	9/11/08	12/1/08	0 d																					
76	Project Segment Operational Test (3 months)	60 d	9/11/08	12/1/08	0 d																					
77	Final Acceptance (Payment Milestone)	0 d	12/1/08	12/1/08	0 d																					

4. Schedule for Hypothetical Project Segment 1-3

ID	Task Name	Duration	Start	Finish	Float	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
1	TxDOT Loop 49 Hypothetical Project 1-3	370 d	10/3/06	3/2/07	0 d																						
2	Notice to Proceed	0 d	10/3/05	10/3/05	0 d																						
3	Program Planning and PDR	60 d	10/3/05	12/3/05	0 d																						
4	Schedule Baseline	60 d	10/3/05	12/3/05	0 d																						
5	Cost Baseline	60 d	10/3/05	12/3/05	0 d																						
6	Internal Startup Review (Gate 5) Prep & Review	45 d	10/3/05	12/3/05	0 d																						
7	Preliminary Design Review	0 d	12/6/05	12/6/05	100 d																						
8	TxDOT approval of Preliminary Design Review	0 d	12/16/05	12/16/05	100 d																						
9	System Configuration	110 d	10/3/05	3/3/06	130 d																						
10	System Engineering	60 d	10/3/05	12/3/05	130 d																						
11	MOMS Configuration	20 d	10/3/05	10/28/05	130 d																						
12	RCU Configuration	20 d	10/3/05	10/28/05	130 d																						
13	Hardware adaptation	20 d	10/3/05	11/25/05	110 d																						
14	Cable Diagrams	20 d	11/7/05	12/2/05	105 d																						
15	Detailed Design Review	0 d	12/16/05	12/16/05	100 d																						
16	TxDOT approval of Detailed Design Review	0 d	12/23/05	12/23/05	100 d																						
17	Factory Configuration & Test	55 d	11/21/05	2/3/06	130 d																						
18	MOMS Configuration Implementation	20 d	11/21/05	12/16/05	145 d																						
19	RCU Configuration Implementation	20 d	11/21/05	12/16/05	145 d																						
20	Hardware adaptation	20 d	11/28/05	12/23/05	110 d																						
21	Cable Diagrams	20 d	12/5/05	12/30/05	105 d																						
22	Configuration Integration & Test	20 d	12/10/05	12/7/06	105 d																						
23	Configuration Integration complete (Miles)	0 d	2/3/06	2/3/06	100 d																						
24	Project configuration	20 d	2/3/06	3/3/06	130 d																						
25	Project configuration	20 d	2/3/06	3/3/06	100 d																						
26	Construction Design	75 d	10/3/06	1/13/06	0 d																						
27	Review existing data	5 d	10/3/05	10/7/05	0 d																						
28	Review Gentry and other Technical data	10 d	10/3/05	10/14/05	0 d																						
29	Utility Coordination & Connections	60 d	10/3/05	12/23/05	5 d																						
30	Pavement/Roadway design	60 d	10/10/05	12/30/05	5 d																						
31	Drainage Design	55 d	10/17/05	12/30/05	5 d																						
32	30% Submittal and Review	0 d	10/28/05	10/28/05	10 d																						
33	Utility Connection Details	30 d	10/19/05	11/29/05	5 d																						
34	Signing, Pavement, Markings & Illumination	20 d	10/31/05	11/25/05	0 d																						
35	60% Submittal and Review	0 d	11/11/05	11/11/05	0 d																						
36	Gentry Foundation and Structure Design	55 d	10/17/05	12/30/05	5 d																						
37	Traffic Control	40 d	10/26/05	12/20/05	5 d																						
38	SWAP Plans	45 d	10/31/05	12/30/05	5 d																						
39	90% Submittal and Review	0 d	12/30/05	12/30/05	5 d																						
40	PS&E Sheet Development	59 d	10/10/05	12/29/05	5 d																						
41	100% Submittal	0 d	12/30/05	12/30/05	5 d																						
42	TxDOT construction design approval	0 d	1/13/06	1/13/06	15 d																						

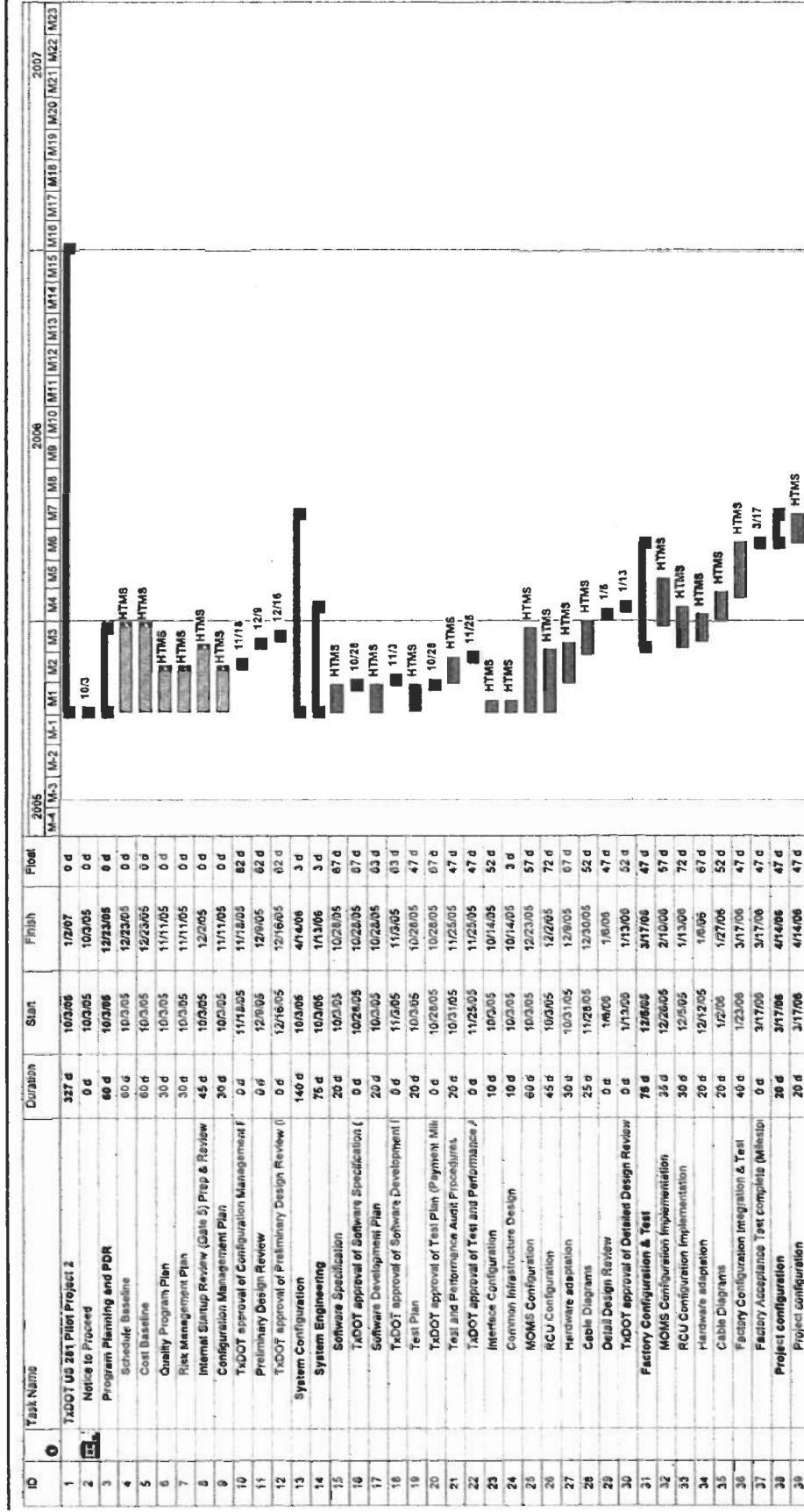
ID	Task Name	Duration	Start	Finish	Float	M-2	M-1	M-4	M-3	M-5	M-6	M-7	M-8	M-9	M-10	M-11	M-12	M-13	M-14	M-15	M-16	M-17	M-18	M-19	M-20
43	Tail Collection Procurement	110 d	10/10/06	3/0/06	25 d																				
44	Place Orders	20 d	10/10/05	1/14/05	25 d																				
45	Material Receipt and C/O	100 d	10/24/05	3/0/06	25 d																				
46	Infrastructure Procurement	105 d	1/14/06	4/7/06	0 d																				
47	Place Orders	30 d	1/14/05	12/23/05	0 d																				
48	Material Receipt and C/O	85 d	1/21/05	4/7/06	0 d																				
49	Site Installation, Integration & Test	200 d	1/8/06	10/30/06	0 d																				
50	Site 1 Gantry I&T	60 d	1/8/06	3/31/06	0 d																				
51	Site 1 Gantry Infrastructure Construction	20 d	1/8/06	2/3/06	0 d																				
52	Site 1 Gantry TCS Installation	35 d	2/6/06	3/24/06	0 d																				
53	Site 1 Gantry Integration	5 d	3/27/06	3/31/06	0 d																				
54	Site 1 Gantry Complete (Payment Milestone)	0 d	3/31/06	3/31/06	0 d																				
55	Site 2 Gantry I&T	35 d	3/6/06	4/21/06	0 d																				
56	Site 3 Gantry I&T	35 d	3/6/06	4/21/06	0 d																				
57	Site 4 Gantry I&T	35 d	3/6/06	4/21/06	0 d																				
58	Site 5 Gantry I&T	35 d	3/6/06	4/21/06	0 d																				
59	Site 6 Gantry I&T	35 d	4/10/06	5/26/06	0 d																				
60	Site 7 Gantry I&T	35 d	4/10/06	5/26/06	0 d																				
61	Site 8 Gantry I&T	35 d	4/10/06	5/26/06	0 d																				
62	Site 9 Gantry I&T	35 d	4/10/06	5/26/06	0 d																				
63	Site 10 Gantry I&T	35 d	4/10/06	5/26/06	0 d																				
64	Site 11 Gantry I&T	35 d	5/15/06	6/30/06	0 d																				
65	Site 12 Gantry I&T	35 d	5/15/06	6/30/06	0 d																				
66	Site 13 Gantry I&T	35 d	5/15/06	6/30/06	0 d																				
67	Site 14 Gantry I&T	35 d	5/17/06	7/1/06	0 d																				
68	Site 15 Gantry I&T	35 d	5/17/06	7/1/06	0 d																				
69	Site 16 Gantry I&T	35 d	6/21/06	8/8/06	0 d																				
70	Site 17 Gantry I&T	35 d	6/21/06	8/8/06	0 d																				
71	Site 18 Gantry I&T	35 d	6/21/06	8/8/06	0 d																				
72	Site 19 Gantry I&T	35 d	6/21/06	8/8/06	0 d																				
73	Site 20 Gantry I&T	35 d	6/21/06	8/8/06	0 d																				
74	Site 21 Gantry I&T	35 d	7/24/06	9/8/06	0 d																				

ID	Task Name	Duration	Start	Finish	Float	M2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
75	Site 22 Gantry I&T	35 d	7/24/06	9/8/06	0 d														HTMS								
76	Site 23 Gantry I&T	35 d	7/24/06	9/8/06	0 d														HTMS								
77	Site 24 Gantry I&T	35 d	7/24/06	9/8/06	0 d														HTMS								
78	Site 25 Gantry I&T	35 d	7/24/06	9/8/06	0 d														HTMS								
79	Site 26 Gantry I&T	35 d	8/28/06	10/13/06	0 d														HTMS								
80	Site 27 Gantry I&T	35 d	8/28/06	10/13/06	0 d														HTMS								
81	Site 28 Gantry I&T	35 d	8/28/06	10/13/06	0 d														HTMS								
82	Site 29 Gantry I&T	35 d	8/28/06	10/13/06	0 d														HTMS								
83	Project Segment Approval Integration & Test	40 d	9/4/06	10/27/06	0 d														HTMS								
84	Project Segment Approval Integration	30 d	9/4/06	10/13/06	0 d														HTMS								
85	Project Segment Approval Test	10 d	10/16/06	10/27/06	0 d														HTMS								
86	Project Segment Approval Self-off (390 days, 1	0 d	10/27/06	10/27/06	0 d														HTMS								
87	System Acceptance (Payment Milestone)	0 d	10/27/06	10/27/06	0 d														HTMS								
88	Project Segment Commissioning	30 d	10/30/06	12/8/06	0 d														HTMS								
89	Project Segment Commissioning Integration	30 d	10/30/06	12/8/06	0 d														HTMS								
90	Project Segment Commissioning complete	0 d	12/8/06	12/8/06	0 d														HTMS								
91	Project Segment Operational Test	60 d	12/11/06	3/2/07	0 d														HTMS								
92	Project Segment Operational Test (3 month to	60 d	12/11/06	3/2/07	0 d														HTMS								
93	Final Acceptance (Payment Milestone)	0 d	3/2/07	3/2/07	0 d														HTMS								

5. Schedule for Pilot System 2



Volume 4 - Appendices  
Appendix D – Project Schedules



Volume 4 - Appendices  
Appendix D – Project Schedules

Raytheon

ID	Task Name	Duration	Start	Finish	Flag	2005	2006	2007
						M-4 M-3 M-2 M-1 M1 M2 M3 M4 M5 M6 M7 M8 M9 M10 M11 M12 M13 M14 M15 M16 M17 M18 M19 M20 M21 M22 M23		
40	Construction Design	48 d	10/3/05	12/7/05	0 d			
41	Review existing data	5 d	10/3/05	10/7/05	0 d			
42	Review Gantry and other Technical data	10 d	10/3/05	10/14/05	0 d			
43	Utility Coordination & Connections	35 d	10/3/05	11/18/05	1 d			
44	Pavement/Roadway design	20 d	10/17/05	11/1/05	9 d			
45	Drainage Design	20 d	10/17/05	11/1/05	14 d			
46	30% Submittal and Review	0 d	10/25/05	10/25/05	9 d			
47	Utility Connection Details	20 d	10/18/05	11/5/05	1 d			
48	Signing, Pavement, Markings & Illumination	20 d	10/27/05	11/23/05	0 d			
49	60% Submittal and Review	0 d	11/7/05	11/7/05	0 d			
50	Gantry Foundation and Structure Design	25 d	10/17/05	11/18/05	121 d			
51	Traffic Control	15 d	10/25/05	11/14/05	122 d			
52	SWOP Plans	15 d	10/28/05	11/17/05	122 d			
53	90% Submittal and Review	0 d	11/18/05	11/18/05	121 d			
54	PSLE Sheet Development	25 d	10/17/05	11/18/05	120 d			
55	100% Submittal	0 d	11/23/05	11/23/05	118 d			
56	TxDOT construction design approval	0 d	12/7/05	12/7/05	118 d			
57	Toll Collection Procurement	95 d	10/10/05	2/17/06	26 d			
58	Place Orders	15 d	10/10/05	10/28/05	26 d			
59	Material Receipt and C/O	85 d	11/8/05	3/6/06	0 d			
60	Infrastructure Procurement	20 d	11/8/05	12/5/05	0 d			
61	Place Orders	85 d	12/5/05	3/6/06	0 d			
62	Material Receipt and C/O	166 d	1/10/06	8/18/06	0 d			
63	Site Installation, Integration & Test	74 d	1/10/06	4/21/06	0 d			
64	Site 1 Gantry I&T	25 d	1/10/06	2/13/06	0 d			
65	Site 1 Gantry Infrastructure Construction	20 d	2/27/06	3/24/06	26 d			
66	Site 1 Gantry TCS Installation	15 d	3/27/06	4/14/06	26 d			
67	Site 1 Gantry Integration	5 d	4/17/06	4/21/06	26 d			
68	Site 1 Gantry Test	0 d	4/21/06	4/21/06	26 d			
69	Site 1 Gantry Complete (Payment Milestone)	84 d	2/13/06	4/28/06	0 d			
70	Site 2 I&T	25 d	2/13/06	3/20/06	0 d			
71	Site 2 Infrastructure Construction	15 d	3/24/06	4/14/06	27 d			
72	Site 2 Gantry TCS Installation	10 d	4/17/06	4/28/06	37 d			
73	Site 2 Gantry Integration & Test	0 d	4/28/06	4/28/06	37 d			
74	Site 2 Gantry Complete (Payment Milestone)	39 d	3/20/06	5/12/06	0 d			
75	Site 3 I&T	20 d	3/20/06	4/17/06	0 d			
76	Site 3 Infrastructure Construction	15 d	4/14/06	5/6/06	27 d			
77	Site 3 Gantry TCS Installation	5 d	5/6/06	5/12/06	27 d			
78	Site 3 Gantry Integration & Test	0 d	5/12/06	5/12/06	27 d			
79	Site 3 Gantry Complete (Payment Milestone)							

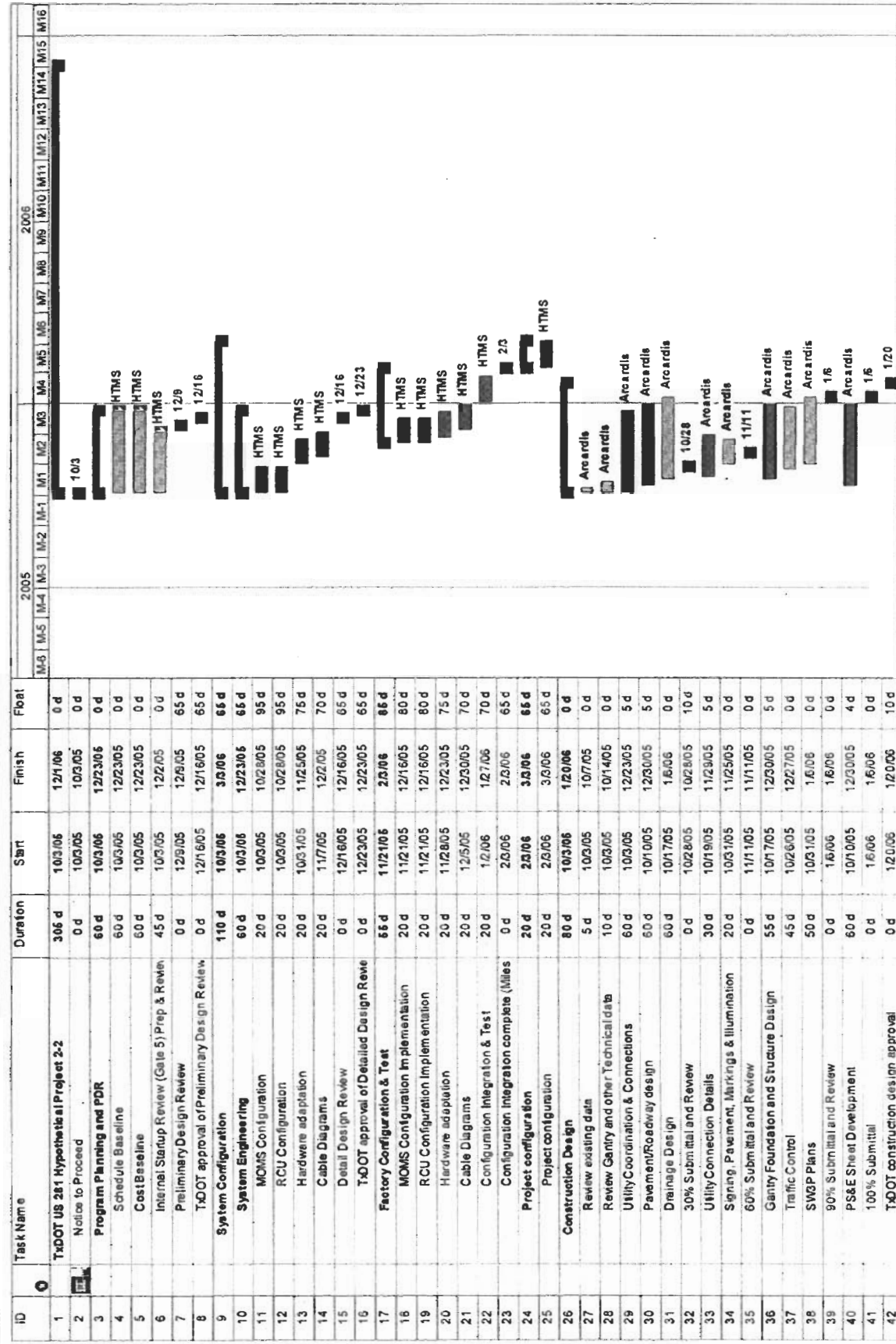
**Competition Solutions**  
**Reveal your competitive**

6. Schedule for Hypothetical Project Segment 2-1

Raytheon Proprietary  
Competition Sensitive

Raytheon Proprietary  
Competition Sensitive

7. Schedule for Hypothetical Project Segment 2-2





ID	Task Name	Duration	Start	Finish	Fleet
43	Toll Collection Procurement	110 d	10/1/06	3/0/06	26 d
44	Place Orders	20 d	10/10/05	11/4/05	25 d
45	Material Receipt and C/O	100 d	10/24/05	3/0/06	25 d
46	Infrastructure Procurement	108 d	11/1/05	4/7/06	0 d
47	Place Orders	30 d	11/1/05	12/23/05	0 d
48	Material Receipt and C/O	85 d	12/12/05	4/7/06	0 d
49	Site Installation, Integration & Test	135 d	1/9/06	7/14/06	0 d
50	Site 1 Gantry I&T	65 d	1/9/06	4/7/06	0 d
51	Site 1 Gantry Infrastructure Construction	20 d	1/9/06	2/6/06	0 d
52	Site 1 Gantry TCS Installation	40 d	2/6/06	3/6/06	0 d
53	Site 1 Gantry Integration	5 d	4/8/06	4/7/06	0 d
54	Site 1 Gantry Complete (Payment Missing)	0 d	4/7/06	4/7/06	0 d
55	Site 2 Gantry I&T	40 d	2/20/06	4/14/06	0 d
56	Site 3 Gantry I&T	40 d	2/20/06	4/14/06	0 d
57	Site 4 Gantry I&T	40 d	2/20/06	4/14/06	0 d
58	Site 5 Gantry I&T	40 d	2/20/06	4/14/06	0 d
59	Site 6 Gantry I&T	40 d	3/2/06	4/26/06	0 d
60	Site 7 Gantry I&T	40 d	3/2/06	4/26/06	0 d
61	Site 8 Gantry I&T	40 d	3/2/06	4/26/06	0 d
62	Site 9 Gantry I&T	40 d	3/2/06	4/26/06	0 d
63	Site 10 Gantry I&T	40 d	3/2/06	4/26/06	0 d
64	Site 11 Gantry I&T	40 d	3/14/06	5/6/06	0 d
65	Site 12 Gantry I&T	40 d	3/14/06	5/6/06	0 d
66	Site 13 Gantry I&T	40 d	3/14/06	5/6/06	0 d
67	Site 14 Gantry I&T	40 d	3/16/06	5/10/06	0 d
68	Site 15 Gantry I&T	40 d	3/16/06	5/10/06	0 d
69	Site 16 Gantry I&T	40 d	3/28/06	5/22/06	0 d
70	Site 17 Gantry I&T	40 d	3/28/06	5/22/06	0 d
71	Site 18 Gantry I&T	40 d	3/28/06	5/22/06	0 d
72	Site 19 Gantry I&T	40 d	3/28/06	5/22/06	0 d
73	Site 20 Gantry I&T	40 d	3/28/06	5/22/06	0 d
74	Site 21 Gantry I&T	40 d	4/7/06	6/1/06	0 d
75	Site 22 Gantry I&T	40 d	4/7/06	6/1/06	0 d
76	Site 23 Gantry I&T	40 d	4/7/06	6/1/06	0 d
77	Site 24 Gantry I&T	40 d	4/7/06	6/1/06	0 d
78	Site 25 Gantry I&T	40 d	4/7/06	6/1/06	0 d
79	Site 26 Gantry I&T	40 d	4/19/06	6/13/06	0 d
80	Site 27 Gantry I&T	40 d	4/19/06	6/13/06	0 d
81	Site 28 Gantry I&T	40 d	4/19/06	6/13/06	0 d
82	Site 29 Gantry I&T	40 d	4/19/06	6/13/06	0 d

ID	Task Name	Duration	Start	Finish	Float	2005												2006																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									
						M-6	M-5	M-4	M-3	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
83	Site 30 Gantry I&T	40 d	4/19/06	6/13/06	0 d																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						

8. Schedule for Hypothetical Project Segment 2-3

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Appendix D - Project Schedules

Raytheon

ID	Task Name	Duration	Start	Finish	Float	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
1	TxDOT US 281 Hypothetical Project 2-3	376 d	10/3/05	3/2/07	0 d																						
2	Notice to Proceed	0 d	10/3/05	10/3/05	0 d																						
3	Program Planning and PDR	80 d	10/3/05	12/23/05	0 d																						
4	Schedule Baseline	60 d	10/3/05	12/23/05	0 d																						
5	Cost Baseline	60 d	10/3/05	12/23/05	0 d																						
6	Internal Startup Review (Gate 5) Prep & Review	45 d	10/3/05	12/2/05	0 d																						
7	Preliminary Design Review	0 d	12/9/05	12/9/05	100 d																						
8	TxDOT approval of Preliminary Design Review	0 d	12/16/05	12/16/05	100 d																						
9	System Configuration	110 d	10/3/05	3/3/06	130 d																						
10	System Engineering	60 d	10/3/05	12/23/05	130 d																						
11	MOVS Configuration	20 d	10/3/05	10/28/05	130 d																						
12	RCU Configuration	20 d	10/3/05	10/28/05	130 d																						
13	Hardware adaptation	20 d	10/3/05	11/25/05	110 d																						
14	Cable Diagrams	20 d	11/7/05	12/2/05	105 d																						
15	Detailed Design Review	0 d	12/16/05	12/16/05	100 d																						
16	TxDOT approval of Detailed Design Review	0 d	12/23/05	12/23/05	100 d																						
17	Factory Configuration & Test	55 d	11/21/05	2/3/06	130 d																						
18	MOVS Configuration Implementation	20 d	11/21/05	12/16/05	145 d																						
19	RCU Configuration Implementation	20 d	11/21/05	12/16/05	145 d																						
20	Hardware adaptation	20 d	11/28/05	12/23/05	110 d																						
21	Cable Diagrams	20 d	12/5/05	12/30/05	105 d																						
22	Configuration Integration & Test	20 d	12/06	12/27/05	105 d																						
23	Configuration Integration complete (Miles)	0 d	2/3/06	2/3/06	100 d																						
24	Project configuration	20 d	2/3/06	3/3/06	130 d																						
25	Construction Design	75 d	10/3/05	1/13/06	0 d																						
26	Review existing data	5 d	10/3/05	10/7/05	0 d																						
27	Review Gantry and other Technical data	10 d	10/3/05	10/14/05	0 d																						
28	Utility Coordination & Connections	60 d	10/3/05	12/23/05	5 d																						
29	Pavement/Roadway design	60 d	10/10/05	12/30/05	5 d																						
30	Drainage Design	55 d	10/17/05	12/30/05	5 d																						
31	30% Submittal and Review	0 d	10/28/05	10/28/05	10 d																						
32	Utility Connection Details	30 d	10/19/05	11/29/05	5 d																						
33	Signing, Pavement, Markings & Illumination	20 d	10/31/05	11/25/05	0 d																						
34	60% Submittal and Review	0 d	11/11/05	11/11/05	0 d																						
35	Gantry Foundation and Structure Design	55 d	10/17/05	12/30/05	5 d																						
36	Traffic Control	40 d	10/28/05	12/20/05	5 d																						
37	SWOP Plans	45 d	10/31/05	12/30/05	5 d																						
38	80% Submittal and Review	0 d	12/30/05	12/30/05	5 d																						
39	PS&E Sheet Development	59 d	10/10/05	12/29/05	5 d																						
40	100% Submittal	0 d	12/30/05	12/30/05	5 d																						
41	TxDOT construction design approval	0 d	1/13/06	1/13/06	15 d																						
42																											

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ID	Task Name	Duration	Start	Finish	Float	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
43	Tell Collection Procurement	110 d	10/1/06	3/1/06	25 d																						
44	Place Orders	20 d	10/1/06	11/4/06	25 d																						
45	Material Receipt and C/O	100 d	10/24/05	3/1/06	25 d																						
46	Infrastructure Procurement	106 d	11/1/06	4/7/06	0 d																						
47	Place Orders	30 d	11/1/06	12/30/05	0 d																						
48	Material Receipt and C/O	85 d	12/1/05	4/7/06	0 d																						
49	Site Installation, Integration & Test	200 d	1/9/06	10/1/06	0 d																						
50	Site 1 Gantry I&T	60 d	1/9/06	3/31/06	0 d																						
51	Site 1 Gantry Infrastructure Construction	20 d	1/9/06	2/5/06	0 d																						
52	Site 1 Gantry TCS Installation	35 d	2/6/06	3/24/06	0 d																						
53	Site 1 Gantry Integration	5 d	3/27/06	3/31/06	0 d																						
54	Site 1 Gantry Complete (Payment Mileston)	0 d	3/31/06	3/31/06	0 d																						
55	Site 2 Gantry I&T	40 d	2/20/06	4/14/06	0 d																						
56	Site 3 Gantry I&T	40 d	2/20/06	4/14/06	0 d																						
57	Site 4 Gantry I&T	40 d	2/20/06	4/14/06	0 d																						
58	Site 5 Gantry I&T	40 d	2/20/06	4/14/06	0 d																						
59	Site 6 Gantry I&T	40 d	3/2/06	4/26/06	0 d																						
60	Site 7 Gantry I&T	40 d	3/2/06	4/26/06	0 d																						
61	Site 8 Gantry I&T	40 d	3/2/06	4/26/06	0 d																						
62	Site 9 Gantry I&T	40 d	3/2/06	4/26/06	0 d																						
63	Site 10 Gantry I&T	40 d	3/2/06	4/26/06	0 d																						
64	Site 11 Gantry I&T	40 d	3/14/06	5/8/06	0 d																						
65	Site 12 Gantry I&T	40 d	3/14/06	5/8/06	0 d																						
66	Site 13 Gantry I&T	40 d	3/14/06	5/8/06	0 d																						
67	Site 14 Gantry I&T	40 d	3/16/06	5/10/06	0 d																						
68	Site 15 Gantry I&T	40 d	3/16/06	5/10/06	0 d																						
69	Site 16 Gantry I&T	40 d	3/28/06	5/22/06	0 d																						
70	Site 17 Gantry I&T	40 d	3/28/06	5/22/06	0 d																						
71	Site 18 Gantry I&T	40 d	3/28/06	5/22/06	0 d																						
72	Site 19 Gantry I&T	40 d	3/28/06	5/22/06	0 d																						
73	Site 20 Gantry I&T	40 d	3/28/06	5/22/06	0 d																						
74	Site 21 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
75	Site 22 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
76	Site 23 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
77	Site 24 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
78	Site 25 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
79	Site 26 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
80	Site 27 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
81	Site 28 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						
82	Site 29 Gantry I&T	40 d	4/7/06	6/1/06	0 d																						

ID	Task Name	Duration	Start	Finish	Foot	M2	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
83	Site 30 Gantry I&T	40 d	4/19/06	6/13/06	0 d																					
84	Site 31 Gantry I&T	40 d	5/1/06	6/23/06	0 d																					
85	Site 32 Gantry I&T	40 d	5/1/06	6/23/06	0 d																					
86	Site 33 Gantry I&T	40 d	5/1/06	6/23/06	0 d																					
87	Site 34 Gantry I&T	40 d	5/1/06	6/23/06	0 d																					
88	Site 35 Gantry I&T	40 d	5/1/06	6/23/06	0 d																					
89	Site 36 Gantry I&T	40 d	5/1/06	7/5/06	0 d																					
90	Site 37 Gantry I&T	40 d	5/1/06	7/5/06	0 d																					
91	Site 38 Gantry I&T	40 d	5/1/06	7/5/06	0 d																					
92	Site 39 Gantry I&T	40 d	5/1/06	7/5/06	0 d																					
93	Site 40 Gantry I&T	40 d	5/1/06	7/5/06	0 d																					
94	Site 41 Gantry I&T	40 d	5/23/06	7/17/06	0 d																					
95	Site 42 Gantry I&T	40 d	5/23/06	7/17/06	0 d																					
96	Site 43 Gantry I&T	40 d	5/23/06	7/17/06	0 d																					
97	Site 44 Gantry I&T	40 d	5/23/06	7/17/06	0 d																					
98	Site 45 Gantry I&T	40 d	5/23/06	7/17/06	0 d																					
99	Site 46 Gantry I&T	40 d	6/2/06	7/27/06	0 d																					
100	Site 47 Gantry I&T	40 d	6/2/06	7/27/06	0 d																					
101	Site 48 Gantry I&T	40 d	6/2/06	7/27/06	0 d																					
102	Site 49 Gantry I&T	40 d	6/2/06	7/27/06	0 d																					
103	Site 50 Gantry I&T	40 d	6/2/06	7/27/06	0 d																					
104	Site 51 Gantry I&T	40 d	6/13/06	8/7/06	0 d																					
105	Site 52 Gantry I&T	40 d	6/13/06	8/7/06	0 d																					
106	Site 53 Gantry I&T	40 d	6/13/06	8/7/06	0 d																					
107	Site 54 Gantry I&T	40 d	6/13/06	8/7/06	0 d																					
108	Site 55 Gantry I&T	40 d	6/13/06	8/7/06	0 d																					
109	Site 56 Gantry I&T	40 d	6/22/06	8/16/06	0 d																					
110	Site 57 Gantry I&T	40 d	6/22/06	8/16/06	0 d																					
111	Site 58 Gantry I&T	40 d	6/22/06	8/16/06	0 d																					
112	Site 59 Gantry I&T	40 d	6/22/06	8/16/06	0 d																					
113	Site 60 Gantry I&T	40 d	6/22/06	8/16/06	0 d																					
114	Site 61 Gantry I&T	40 d	7/3/06	8/25/06	0 d																					
115	Site 62 Gantry I&T	40 d	7/3/06	8/25/06	0 d																					
116	Site 63 Gantry I&T	40 d	7/3/06	8/25/06	0 d																					
117	Site 64 Gantry I&T	40 d	7/3/06	8/25/06	0 d																					
118	Site 65 Gantry I&T	40 d	7/3/06	8/25/06	0 d																					
119	Site 66 Gantry I&T	40 d	7/12/06	9/5/06	0 d																					
120	Site 67 Gantry I&T	40 d	7/12/06	9/5/06	0 d																					

ID	Task Name	Duration	Start	Finish	Fleet	M-2	M-1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20
121	Site 68 Gantry I&T	40 d	7/12/06	9/5/06	0 d													HTMS								
122	Site 69 Gantry I&T	40 d	7/12/06	9/5/06	0 d													HTMS								
123	Site 70 Gantry I&T	40 d	7/12/06	9/5/06	0 d													HTMS								
124	Site 71 Gantry I&T	40 d	7/21/06	9/14/06	0 d													HTMS								
125	Site 72 Gantry I&T	40 d	7/21/06	9/14/06	0 d													HTMS								
126	Site 73 Gantry I&T	40 d	7/21/06	9/14/06	0 d													HTMS								
127	Site 74 Gantry I&T	40 d	7/21/06	9/14/06	0 d													HTMS								
128	Site 75 Gantry I&T	40 d	7/21/06	9/14/06	0 d													HTMS								
129	Site 76 Gantry I&T	40 d	8/1/06	9/25/06	0 d													HTMS								
130	Site 77 Gantry I&T	40 d	8/1/06	9/25/06	0 d													HTMS								
131	Site 78 Gantry I&T	40 d	8/1/06	9/25/06	0 d													HTMS								
132	Site 79 Gantry I&T	40 d	8/1/06	9/25/06	0 d													HTMS								
133	Site 80 Gantry I&T	40 d	8/1/06	9/25/06	0 d													HTMS								
134	Site 81 Gantry I&T	40 d	8/1/06	10/4/06	0 d													HTMS								
135	Site 82 Gantry I&T	40 d	8/1/06	10/4/06	0 d													HTMS								
136	Site 83 Gantry I&T	40 d	8/1/06	10/4/06	0 d													HTMS								
137	Site 84 Gantry I&T	40 d	8/1/06	10/4/06	0 d													HTMS								
138	Site 85 Gantry I&T	40 d	8/1/06	10/4/06	0 d													HTMS								
139	Site 86 Gantry I&T	40 d	8/21/06	10/13/06	0 d													HTMS								
140	Site 87 Gantry I&T	40 d	8/21/06	10/13/06	0 d													HTMS								
141	Site 88 Gantry I&T	40 d	8/21/06	10/13/06	0 d													HTMS								
142	Site 89 Gantry I&T	40 d	8/21/06	10/13/06	0 d													HTMS								
143	Project Segment Approval Integration & Test	40 d	9/4/06	10/27/06	0 d													HTMS								
144	Project Segment Approval Integration	30 d	9/4/06	10/13/06	0 d													HTMS								
145	Project Segment Approval Test	10 d	10/16/06	10/27/06	0 d													HTMS								
146	Project Segment Approval Self-off (390 days, 1	0 d	10/27/06	10/27/06	0 d													10/27								
147	System Acceptance (Payment Milestone)	0 d	10/27/06	10/27/06	0 d													10/27								
148	Project Segment Commissioning	30 d	10/30/06	12/8/06	0 d													HTMS								
149	Project Segment Commissioning Integration	30 d	10/30/06	12/8/06	0 d													HTMS								
150	Project Segment Commissioning complete	0 d	12/8/06	12/8/06	0 d													HTMS								
151	Project Segment Operational Test	60 d	12/11/06	3/2/07	0 d													HTMS								
152	Project Segment Operational Test (2 month te	60 d	12/11/06	3/2/07	0 d													HTMS								
153	Final Acceptance (Payment Milestone)	0 d	3/2/07	3/2/07	0 d													HTMS								

9. Schedule for Pilot System 3

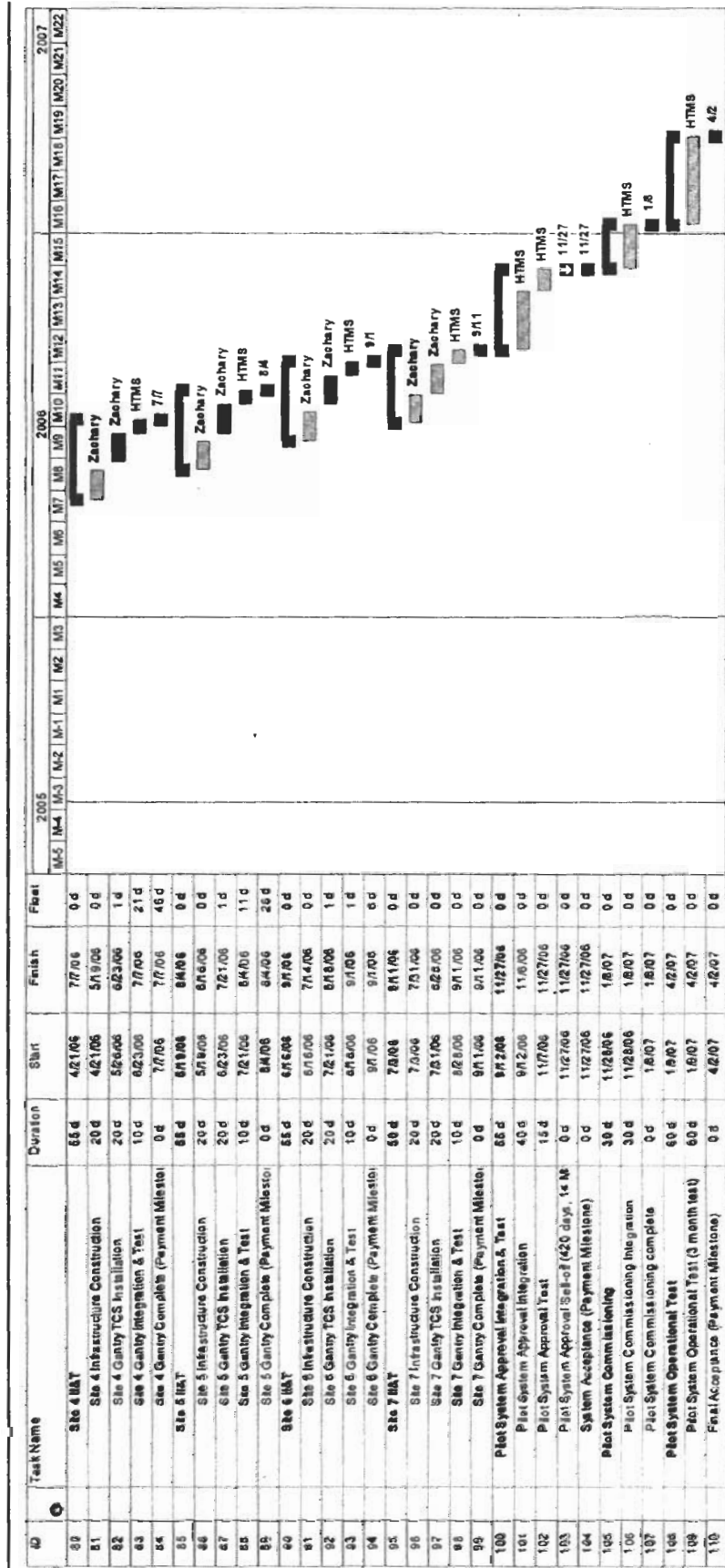


Raytheon Proprietary  
Competition Sensitive

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ID	Task Name	Duration	Start	Finish	Float	2005												2006												2007																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				
						M-5	M-4	M-3	M-2	M-1	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19	M20	M21	M22																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
40	Construction Design	60 d	10/3/05	12/9/05	0 d																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													

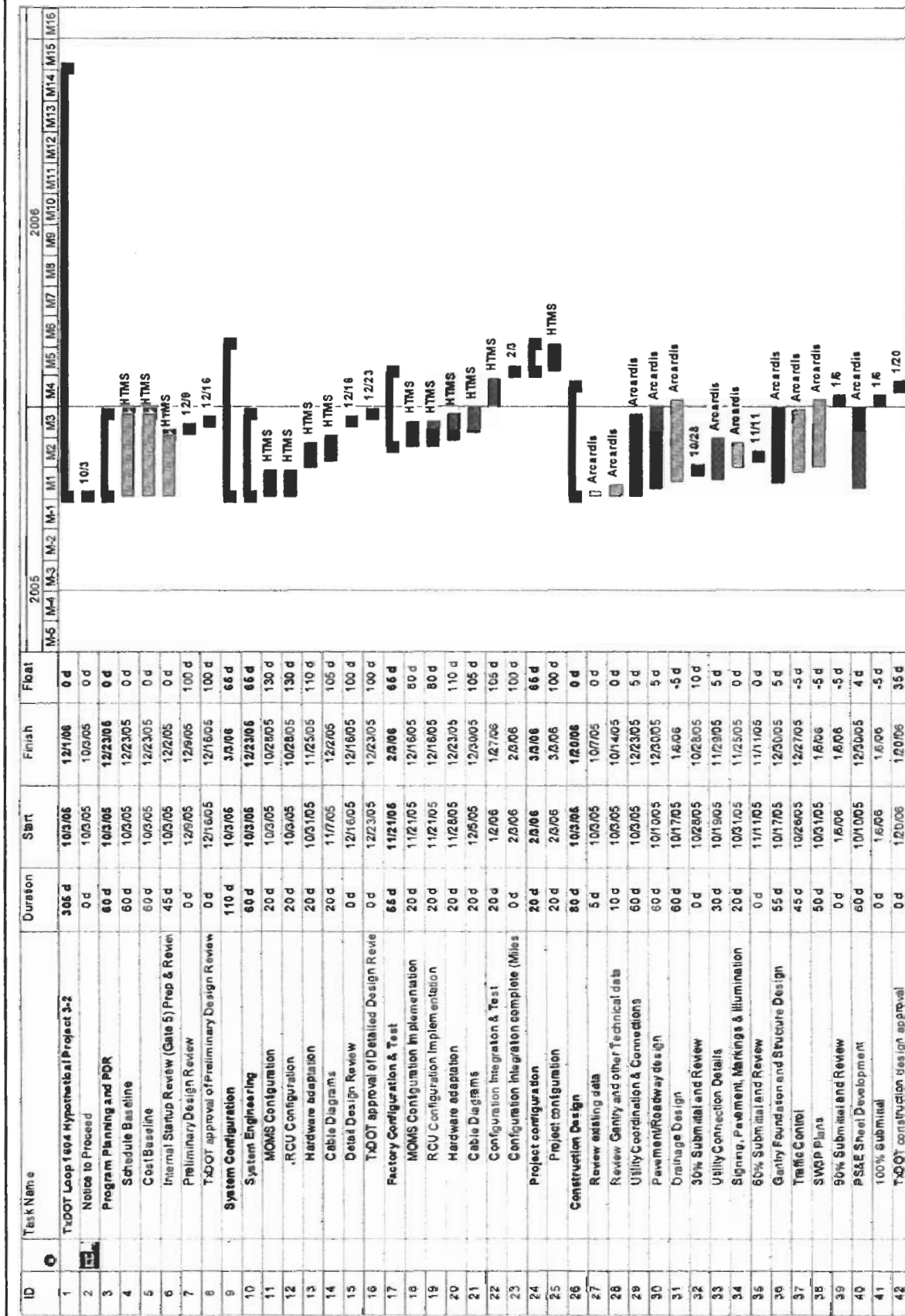


10. Schedule for Hypothetical Project Segment 3-1

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Competition Sensitive

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11. Schedule for Hypothetical Project Segment 3-2





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12. Schedule for Hypothetical Project Segment 3-3

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ID	Task Name	Duration	Start	Finish	First	M-3	M-2	M-1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19
1	TxDOT Loop 180.4 Hypothetical Project 3-3	370 d	10/3/05	3/2/07	0 d																					
2	Notice to Proceed	0 d	10/3/05	10/3/05	0 d																					
3	Program Planning and PDR	60 d	10/3/05	12/3/05	0 d																					
4	Schedule Baseline	60 d	10/3/05	12/3/05	0 d																					
5	Cost Baseline	60 d	10/3/05	12/3/05	0 d																					
6	Internal Startup Review (Gate 5) Prep & Review	45 d	10/3/05	12/2/05	0 d																					
7	Preliminary Design Review	0 d	12/9/05	12/9/05	100 d																					
8	TxDOT approval of Preliminary Design Review	0 d	12/16/05	12/16/05	100 d																					
9	System Configuration	110 d	10/3/05	3/3/06	130 d																					
10	System Engineering	60 d	10/3/05	12/3/05	130 d																					
11	MCMS Configuration	20 d	10/3/05	10/28/05	130 d																					
12	RCU Configuration	20 d	10/3/05	10/28/05	130 d																					
13	Hardware adaptation	20 d	10/3/05	11/25/05	110 d																					
14	Cable Diagrams	20 d	11/7/05	12/2/05	105 d																					
15	Detailed Design Review	0 d	12/16/05	12/16/05	100 d																					
16	TxDOT approval of Detailed Design Review	0 d	12/23/05	12/23/05	100 d																					
17	Factory Configuration & Test	55 d	11/21/05	2/3/06	130 d																					
18	MCMS Configuration Implementation	20 d	11/21/05	12/16/05	145 d																					
19	RCU Configuration Implementation	20 d	11/21/05	12/16/05	145 d																					
20	Hardware adaptation	20 d	11/28/05	12/23/05	110 d																					
21	Cable Diagrams	20 d	12/5/05	12/30/05	105 d																					
22	Configuration Integration & Test	20 d	12/6/05	12/27/05	105 d																					
23	Configuration Integration complete (Miles)	0 d	2/3/06	2/3/06	100 d																					
24	Project configuration	20 d	2/3/06	3/3/06	130 d																					
25	Project configuration	20 d	2/3/06	3/3/06	100 d																					
26	Construction Design	80 d	10/3/05	12/3/05	0 d																					
27	Review existing data	5 d	10/3/05	10/7/05	0 d																					
28	Review Gentry and other Technical data	10 d	10/3/05	10/14/05	0 d																					
29	Utility Coordination & Connections	60 d	10/3/05	12/3/05	0 d																					
30	Pavement/Roadway design	60 d	10/10/05	12/30/05	10 d																					
31	Drainage Design	55 d	10/17/05	12/30/05	5 d																					
32	30% Submittal and Review	0 d	10/28/05	10/28/05	10 d																					
33	Utility Connection Details	30 d	10/19/05	11/28/05	0 d																					
34	Signing, Pavement, Markings & Illumination	20 d	10/24/05	11/13/05	0 d																					
35	90% Submittal and Review	0 d	11/4/05	11/4/05	0 d																					
36	Gentry Foundation and Structure Design	55 d	10/17/05	12/30/05	15 d																					
37	Traffic Control	45 d	10/26/05	12/27/05	10 d																					
38	SWAP Plans	50 d	10/31/05	1/6/06	10 d																					
39	90% Submittal and Review	0 d	1/6/06	1/6/06	10 d																					
40	PS&E Sheet Development	60 d	10/10/05	12/30/05	14 d																					
41	100% Submittal	0 d	1/6/06	1/6/06	10 d																					
42	TxDOT construction design approval	0 d	1/20/06	1/20/06	5 d																					

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Raytheon

ID	Task Name	Duration	Start	Finish	Float	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19
0						05																
43	Toll Collection Procurement	110 d	10/1/06	3/10/06	26 d																	
44	Place Orders	20 d	10/1/06	11/4/06	25 d																	
45	Material Receipt and C/O	100 d	10/24/06	3/10/06	25 d																	
46	Infrastructure Procurement	106 d	11/7/06	3/31/06	0 d																	
47	Place Orders	30 d	11/7/06	12/16/06	0 d																	
48	Material Receipt and C/O	85 d	12/5/06	3/31/06	0 d																	
49	Site Installation, Integration & Test	206 d	12/10/06	10/13/06	0 d																	
50	Site 1 Gantry I&T	66 d	12/10/06	3/31/06	0 d																	
51	Site 1 Gantry Infrastructure Construction	20 d	12/10/06	12/7/06	0 d																	
52	Site 1 Gantry TCS Installation	40 d	1/30/06	3/24/06	5 d																	
53	Site 1 Gantry Integration	5 d	3/27/06	3/31/06	5 d																	
54	Site 1 Gantry Complete (Payment Milestone)	0 d	3/31/06	3/31/06	5 d																	
55	Site 2 Gantry I&T	40 d	2/13/06	4/7/06	0 d																	
56	Site 3 Gantry I&T	40 d	2/13/06	4/7/06	0 d																	
57	Site 4 Gantry I&T	40 d	2/13/06	4/7/06	0 d																	
58	Site 5 Gantry I&T	40 d	2/13/06	4/7/06	0 d																	
59	Site 6 Gantry I&T	40 d	2/27/06	4/21/06	0 d																	
60	Site 7 Gantry I&T	40 d	2/27/06	4/21/06	0 d																	
61	Site 8 Gantry I&T	40 d	2/27/06	4/21/06	0 d																	
62	Site 9 Gantry I&T	40 d	2/27/06	4/21/06	0 d																	
63	Site 10 Gantry I&T	40 d	2/27/06	4/21/06	0 d																	
64	Site 11 Gantry I&T	40 d	3/13/06	5/5/06	0 d																	
65	Site 12 Gantry I&T	40 d	3/13/06	5/5/06	0 d																	
66	Site 13 Gantry I&T	40 d	3/13/06	5/5/06	0 d																	
67	Site 14 Gantry I&T	40 d	3/13/06	5/5/06	0 d																	
68	Site 15 Gantry I&T	40 d	3/13/06	5/5/06	0 d																	
69	Site 16 Gantry I&T	40 d	3/29/06	5/23/06	0 d																	
70	Site 17 Gantry I&T	40 d	3/29/06	5/23/06	0 d																	
71	Site 18 Gantry I&T	40 d	3/29/06	5/23/06	0 d																	
72	Site 19 Gantry I&T	40 d	3/29/06	5/23/06	0 d																	
73	Site 20 Gantry I&T	40 d	3/29/06	5/23/06	0 d																	
74	Site 21 Gantry I&T	40 d	4/12/06	6/6/06	0 d																	
75	Site 22 Gantry I&T	40 d	4/12/06	6/6/06	0 d																	
76	Site 23 Gantry I&T	40 d	4/12/06	6/6/06	0 d																	
77	Site 24 Gantry I&T	40 d	4/12/06	6/6/06	0 d																	
78	Site 25 Gantry I&T	40 d	4/12/06	6/6/06	0 d																	
79	Site 26 Gantry I&T	40 d	4/26/06	6/20/06	0 d																	
80	Site 27 Gantry I&T	40 d	4/26/06	6/20/06	0 d																	
81	Site 28 Gantry I&T	40 d	4/26/06	6/20/06	0 d																	
82	Site 29 Gantry I&T	40 d	4/26/06	6/20/06	0 d																	

ID	Task Name	Duration	Start	Finish	Float	2006																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
						M3	M2	M1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
85	Site 32 Gantry I&T	40 d	5/10/06	7/4/06	0 d																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	

ID	Task Name	Duration	Start	Finish	Float	Q5	M-3	M-2	M-1	M2	M3	M4	M5	M6	M7	M8	M9	M10	M11	M12	M13	M14	M15	M16	M17	M18	M19
124	Site 71 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
125	Site 72 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
126	Site 73 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
127	Site 74 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
128	Site 75 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
129	Site 76 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
130	Site 77 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
131	Site 78 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
132	Site 79 Gantry I&T	40 d	8/9/06	10/3/06	0 d																						
133	Project Segment Approval Integration & Test	40 d	8/9/06	10/3/06	0 d																						
134	Project Segment Approval Integration	30 d	9/4/06	10/3/06	0 d																						
135	Project Segment Approval Test	10 d	10/16/06	10/27/06	0 d																						
136	Project Segment Approval Self-off (390 days, 1 Mts ARQ)	0 d	10/27/06	10/27/06	0 d																						
137	System Acceptance (Payment Milestone)	0 d	10/27/06	10/27/06	0 d																						
138	Project Segment Commissioning	30 d	10/30/06	12/9/06	0 d																						
139	Project Segment Commissioning Integration	30 d	10/30/06	12/9/06	0 d																						
140	Project Segment Commissioning complete	0 d	12/9/06	12/9/06	0 d																						
141	Project Segment Operational Test	60 d	12/11/06	3/2/07	0 d																						
142	Project Segment Operational Test (3 month to	60 d	12/11/06	3/2/07	0 d																						
143	Final Acceptance (Payment Milestone)	0 d	3/2/07	3/2/07	0 d																						

## EXHIBIT W

### FORM OF SOURCE CODE ESCROW AGREEMENT

#### SOURCE CODE ESCROW AGREEMENT

Account Number \_\_\_\_\_

This Source Code Escrow Agreement ("Agreement") is effective \_\_\_\_\_, 20\_\_ among \_\_\_\_\_, a \_\_\_\_\_ ("Escrow Agent"), \_\_\_\_\_, a \_\_\_\_\_ ("Depositor"), The Texas Department of Transportation ("Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

A. Depositor and Beneficiary have entered or will enter into a Comprehensive Development Agreement TxDOT Statewide Open-Road Toll Collection System (referred to in this Agreement as the "Contract") under the terms of which Depositor has granted Beneficiary licenses to use certain software and supporting materials, and Depositor will from time to time modify, add to, refine, substitute, revise, enhance, update, revise, upgrade and/or correct such software and supporting materials and will submit these updated software development documents on an ongoing basis as the same occur, but at a minimum with each Draw Request for payment based upon Milestones relating to Software development, and for Maintenance Price Payment Draw Requests. Capitalized terms used herein without definitions shall have the meanings given to such terms in the Contract.

B. Depositor has agreed in the Contract to deposit into escrow with Escrow Agent the Software Source Code and related documentation of Software required to be delivered as part of the Work under the Contract, including Source Code in ASCII format, on industry standard media and source code listings in human readable form of the Software as well as paper and electronic copies of the functional specifications and design specifications, code and documentation for tests used by Depositor to verify Software behavior, and user and technical documentation (all of which, together with modifications, additions, enhancements, updates, revisions, upgrades and corrections thereto and thereof, and all other supplementary deposits under Section 1.1 below, being collectively referred to in this Agreement as the "Source Code").

C. Depositor and/or its Software suppliers desire to avoid disclosure of the Source Code except under certain limited circumstances.

D. The availability of the Source Code to Beneficiary is critical in the conduct of its business and, therefore, Beneficiary needs access to the Source Code under certain limited circumstances.

E. Depositor and Beneficiary desire to establish an escrow with Escrow Agent to provide for the retention, administration and controlled access of the Source Code.

F. Escrow Agent has consented to act as Escrow Agent and to receive and hold the current version and any future versions of the Source Code.

G. The parties desire this Agreement to be supplementary to the Contract pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

NOW, THEREFORE, Depositor and Beneficiary hereby engage Escrow Agent to serve as Escrow Agent for the Source Code, Escrow Agent hereby accepts such engagement, and the Parties hereby agree to the establishment and administration of an escrow for the Source Code, on the following terms and conditions.

## ARTICLE 1 -- DEPOSITS

### 1.1 Obligation to Make Deposits.

a. Immediately upon execution of this Agreement, Depositor shall deposit pre-existing Source Code to be used in connection with the Project with Escrow Agent.

b. Based on Draw Requests for Milestones related to Software System development, Depositor shall deposit the then current version of the Source Code under development by Depositor for the required Work for the Pilot Systems and Project Segments with the Escrow Agent. Depositor shall be required to submit an updated Source Code document reflecting the then current version of the Software Source Code with each Draw Request.

c. Not later than the date a Certificate of Pilot System Acceptance or Project Segment System Acceptance is issued by the Beneficiary as to a Pilot System or Project Segment, Depositor shall deposit with Escrow Agent the then current approved and accepted version of the Source Code that has been developed for the Project.

d. If during any calendar quarter after the date a Certificate of Pilot System Acceptance or Project Segment System Acceptance is issued by the Beneficiary as to a Pilot System or Project Segment Depositor completes and installs in or for the Project any modification, addition, enhancement, update, revision, upgrade or correction of or to any of the Source Code, it shall deposit with Escrow Agent, within 30 days after the end of such calendar quarter, each such modification, addition, enhancement, update, revision, upgrade and correction, and a modified Exhibit A identifying the same. Similarly, if Depositor identifies any additional Source Code to be deposited pursuant to Section 21.8.4 of the Contract, it shall deposit with Escrow Agent such additional Source Code and a modified Exhibit A identifying the same within 30 days following the end of the calendar quarter in which such identification is made. All references in this Agreement to Source Code shall include the initially deposited materials and any materials subsequently deposited pursuant to this Section 1.1(d).



e. Without limiting the foregoing, Depositor also shall deposit in escrow with Escrow Agent, prior to and as a condition to Final Acceptance of a Pilot System or Project Segment, each version of the Source Code in effect on such Final Acceptance Date, together with a modified Exhibit A identifying the same.

f. Each deposit under subsection d. or e. above shall be added to the existing deposit. Each deposit under subsections b. or c. above shall be listed on a modified Exhibit A and Depositor shall sign each modified Exhibit A. Exhibit A and each modified Exhibit A shall be held and maintained separately within the escrow account. Escrow Agent shall create an independent record which documents the activity for Exhibit A and each modified Exhibit A. The processing of all deposits under this Section 1.1 shall be in accordance with Sections 1.2 through 1.6 below.

1.2 Identification of Tangible Media. Prior to each delivery of the Source Code to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Source Code are written or stored. Additionally, with each delivery Depositor shall complete Exhibit A to this Agreement or a modified Exhibit A by listing each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Source Code (whether Depositor or a Software Supplier). Depositor shall sign each Exhibit A or modified Exhibit A and deliver it to Escrow Agent with the Source Code. Such signature shall constitute Depositor's representation and warranty that Exhibit A is true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3 Deposit Inspection. Within three business days after Escrow Agent receives Source Code and Exhibit A or a modified Exhibit A, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on Exhibit A or modified Exhibit A. In addition to the deposit inspection, Beneficiary may elect to cause a verification of the Source Code in accordance with Section 1.6 below.

1.4 Acceptance of Deposit. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on Exhibit A or the modified Exhibit A, Escrow Agent shall date and sign Exhibit A or the modified Exhibit A and mail a copy thereof to Depositor and Beneficiary. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on Exhibit A or the modified Exhibit A, Escrow Agent shall (a) note the discrepancies in writing on Exhibit A or the modified Exhibit A; (b) date and sign Exhibit A or the modified Exhibit A with the exceptions noted; and (c) mail a copy of Exhibit A or the modified Exhibit A to Depositor and Beneficiary. Escrow Agent's acceptance of the deposit occurs upon the signing of Exhibit A or the modified Exhibit A by Escrow Agent.

Delivery of the signed Exhibit A or the modified Exhibit A to Beneficiary is Beneficiary's notice that the Source Code have been received and accepted by Escrow Agent.

1.5 Depositor's Representations. Depositor represents and warrants to Beneficiary as follows:

- a. Depositor lawfully possesses all of the Source Code deposited with Escrow Agent;
- b. With respect to all of the Source Code, Depositor has the right and authority to grant to Escrow Agent and Beneficiary the rights as provided in this Agreement;
- c. The Source Code are not subject to any lien or other encumbrance;
- d. The Source Code consist of the proprietary technology and other materials identified either in the Contract or Exhibit A, as the case may be; and
- e. The Source Code are readable and useable in their current form or, if any portion of the Source Code is encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Verification. Beneficiary shall have the right, at Beneficiary's expense, to cause a verification of any Source Code. Beneficiary shall notify Depositor and Escrow Agent of Beneficiary's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Source Code. If a verification is elected after the Source Code have been delivered to Escrow Agent, then only Escrow Agent, or at Escrow Agent's or Beneficiary's election an independent person or company selected and supervised by Escrow Agent or Beneficiary, may perform the verification. If Beneficiary elects to have an independent person or company perform the verifications, its election and selection shall prevail over any such election by Escrow Agent. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the Source Code and whether the Source Code are all the Source Code. If Escrow Agent or a person or company it selects performs the verification, Escrow Agent shall deliver to Beneficiary a written report thereon not later than 30 days after Beneficiary delivers its written request therefor. Any verification shall take place either at Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If Beneficiary elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the Contract.

1.7 Removal of Source Code. The Source Code may be removed and/or exchanged only on written instructions signed by both the Depositor and Beneficiary, or as otherwise provided in this Agreement.

1.8 Inspection. Beneficiary and Depositor shall be entitled, during normal business hours, to inspect, under the supervision of an officer of Escrow Agent and at Escrow

Agent's facilities, the physical and technical status and condition of the Software. The party undertaking the inspection shall provide written notice (delivered by mail or facsimile with acknowledged transmission) of the pending inspection to the other party, seven calendar days prior to the scheduled date of the inspection. The party receiving the notice shall have the right to be present at the inspection, but such presence is not a condition precedent to the inspecting party's right to proceed with inspection.

## ARTICLE 2 – CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. Escrow Agent shall maintain the Source Code in a secure, environmentally safe, fireproofed vault or locked facility which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the obligation to reasonably protect the confidentiality of the Source Code. Except as provided in this Agreement, Escrow Agent shall not disclose, transfer, make available or use the Source Code. Escrow Agent shall not disclose the content of this Agreement to any third party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Source Code, Escrow Agent shall immediately notify the other Parties unless prohibited by law. It shall be the responsibility of Depositor and/or Beneficiary to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal. (See Section 7.5 below for notices of requested orders.)

2.2 Status Reports. Escrow Agent shall issue to Depositor and Beneficiary a report profiling the account history at least semi-annually. Escrow Agent may provide copies of the account history pertaining to this Agreement upon the request of any other Party.

2.3 Audit Rights. During the term of this Agreement, Depositor and Beneficiary shall each have the right to inspect the written records of Escrow Agent pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

## ARTICLE 3 -- TITLE TO MEDIA

3.1 Title to Media. Title to the media, materials and documents upon which the Source Code is written or stored is vested in Beneficiary pursuant to Section 21.8.1 of the Contract, but is subject to the provisions of this Agreement on access to and release of such media, materials and documents.

3.2 Disclaimer. Depositor and Escrow Agent hereby disclaim and relinquish any title to or ownership of the media, materials and documents upon which the Source Code is written or stored. In addition, Escrow Agent hereby disclaims and relinquishes any title to or ownership of Source Code deposited with Escrow Agent under this Agreement.

## ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean any of the following:

- a. Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 7 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against Depositor, or by or against any Software Supplier as to deposited Source Code it owns (other than bankruptcy proceedings instituted by Depositor or any such Software Supplier against third parties), and, if instituted against Depositor or any such Software Supplier, are allowed against Depositor or any such Software Supplier or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution;
- b. A custodian, trustee or receiver is appointed for Depositor or any such Software Supplier or any substantial part of its assets;
- c. Depositor or any such Software Supplier makes or attempts to make an assignment for the benefit of creditors;
- d. Depositor or any such Software Supplier generally fails to pay its debts when they are due or admits of its inability to pay its debts;
- e. Depositor or any such Software Supplier fails to provide necessary and commercially feasible updates and maintenance releases, or otherwise is in material breach of its software development and support obligations under the Contract;
- f. The Contract is terminated pursuant to its terms because of an "Event of Default";
- g. Depositor or any such Software Supplier ceases to do business in the ordinary course or is unwilling or unable to perform its obligations under the Contract; or
- h. Subject to the limitations in Section 4.5 of this Agreement and the Contract, and subject to Beneficiary's payment of the Software License Fee to Beneficiary as provided in Section 21.8.1 of the Contract, Beneficiary requires the release of the Source Code for the limited purpose of the development of a Pilot System or Project Segment by an RMA or an Other TxDOT Developer other than Depositor.

4.2 Filing For Release. If Beneficiary believes in good faith that a Release Condition has occurred, Beneficiary may provide to Escrow Agent written notice of the occurrence of the Release Condition and a request for the release of the Source Code. If the Release Condition pertains only to a Software Supplier, Beneficiary's notice shall so

indicate. Immediately upon receipt of such notice, Escrow Agent shall provide a copy of the notice to Depositor by commercial express mail.

4.3 Contrary Instructions. From the date Escrow Agent mails the notice requesting release of the Source Code, Depositor shall have ten days to deliver to Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean and be limited to the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Depositor that (a) the person signing for Depositor is an authorized officer or authorized delegate of Depositor and (b) a Release Condition has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such ten-day period, Escrow Agent shall send a copy to Beneficiary by commercial express mail. Additionally, Escrow Agent shall notify both Depositor and Beneficiary that there is a dispute to be resolved pursuant to Section 7.3 of this Agreement. Subject to Section 5.2 of this Agreement, Escrow Agent shall continue to store the Source Code without release pending (i) joint instructions from Depositor and Beneficiary; (ii) dispute resolution pursuant to Section 7.3; or (iii) order of a court. Contrary Instructions received after such ten-day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

4.4 Release of Deposit.

a. If Escrow Agent does not receive Contrary Instructions from the Depositor within such ten-day period, Escrow Agent is authorized to, and shall, immediately release the Source Code to the Beneficiary. If the Release Condition pertains only to a Software Supplier, then Escrow Agent shall only release the Source Code that (a) is identified on Exhibit A as owned by such Software Supplier or (b) lacks identification of ownership on Exhibit A. Any copying expense will be chargeable to Depositor. This Agreement shall terminate upon the release of all the Source Code held by Escrow Agent.

b. Escrow Agent shall promptly release all or any part of the Source Code at any time and from time to time upon receipt of written instructions signed by both Depositor and Beneficiary.

c. Escrow Agent shall also release the Source Code to Beneficiary at any time as directed or ordered by an arbitration award, by a final judgment of a court of competent jurisdiction, or by other final dispute resolution pursuant to Section 7.3. If Beneficiary provides to Escrow Agent a written opinion of counsel for Beneficiary to the effect that such award, judgment or resolution is final and not appealable, Escrow Agent shall proceed with release in accordance with the award, judgment or resolution and may rely on such legal opinion.

4.5 Right to Use Following Release. Upon release of the Source Code in accordance with this Article 4, Beneficiary shall have the right and license to use the released Source Code as provided in the Contract. Beneficiary shall be obligated to maintain the confidentiality of the released Source Code as provided in the Contract.

## ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Article 5. This Agreement shall be terminated in the event (a) Depositor and Beneficiary jointly instruct Escrow Agent in writing that the Agreement is terminated; or (b) Escrow Agent instructs Depositor and Beneficiary in writing that the Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3. If the Source Code are subject to another escrow agreement with Escrow Agent, Escrow Agent reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide written notice of delinquency to all Parties. Any Party shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such notice, then Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all Parties. Escrow Agent shall have no obligation to take any action under this Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the Source Code and transfer or dispose of the Source Code following termination as provided in this Article 5.

5.3 Termination by Resignation. Escrow Agent reserves the right to terminate this Agreement, for any reason, by providing Depositor and Beneficiary with 90-days' written notice of its intent to terminate this Agreement. Within the 90-day period, the Depositor and Beneficiary shall use diligent efforts to enter into a substantially similar agreement with another entity willing and able to perform the functions of Escrow Agent hereunder and thereupon shall provide Escrow Agent with joint written instructions authorizing Escrow Agent to forward the Source Code to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the Source Code in accordance with any such joint written instruction. If Escrow Agent does not receive said joint written instructions within 90 days of the date of Escrow Agent's written termination notice, then Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Source Code and transfer or dispose of Source Code following termination as provided in this Article 5.

5.4 Disposition of Source Code Upon Termination. Upon termination of this Agreement, Escrow Agent shall destroy, return, or otherwise deliver the Source Code in accordance with Depositor's and Beneficiary's joint written instructions. If there are no such joint written instructions, Escrow Agent may, at its sole discretion, commence legal action interpleading Depositor and Beneficiary, deposit the Source Code with the court in such action and otherwise handle and dispose of the Source Code in accordance with court order. In no event shall Escrow Agent have the right to destroy the Source Code or return them to Depositor absent joint written instructions to such effect or final order of a court of competent jurisdiction.

5.5 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's representations and warranties (Section 1.5);
- b. The obligations of safekeeping and confidentiality with respect to the Source Code set forth in Section 2.1;
- c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Source Code has occurred prior to termination;
- d. The obligation to pay Escrow Agent any fees and expenses due;
- e. The obligations of Escrow Agent under Section 5.4;
- f. The provisions of Article 7; and
- g. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

## ARTICLE 6 -- ESCROW AGENT'S FEES

6.1 Fee Payment and Schedule. Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided, which shall be the responsibility of Beneficiary. Escrow Agent shall notify Beneficiary at least 60 days prior to any increase in fees. For any service not listed on Escrow Agent's standard fee schedule, Escrow Agent shall provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. Fees are due 30 days after receipt of an invoice from Escrow Agent detailing the services performed and setting forth fees therefor consistent with the then applicable fee schedule. Escrow Agent may deliver invoices not more frequently than monthly. Except for action to hold and safeguard the Source Code and transfer or dispose of the Source Code following termination as provided in this Article 5, Escrow Agent shall not be required to perform any service whenever any undisputed outstanding balance owed to Escrow Agent is not paid when due.

## ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 4.3(a), Escrow Agent may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.



7.2 Indemnification. Depositor and Beneficiary each agree to indemnify, defend and hold harmless Escrow Agent from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by Escrow Agent relating in any way to this escrow arrangement except to the extent such Liabilities were caused by the negligence or willful misconduct of Escrow Agent or its breach of this Agreement.

7.3 Dispute Resolution. Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Parties, shall be subject to resolution in accordance with the dispute resolution provisions of the DBEC, and any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Beneficiary, Escrow Agent and the O&M Contractor shall be subject to resolution in accordance with the dispute resolution provisions of the OMC. Escrow Agent agrees to be bound by any such final resolution. Notwithstanding the foregoing, any suit in interpleader brought by Escrow Agent under Section 5.4 shall not be by arbitration and may be brought by Escrow Agent in any court having jurisdiction.

7.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of law provisions.

7.5 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Escrow Agent to take, or refrain from taking, any action, that Party shall:

- a. Give Escrow Agent at least two business days' prior notice of the hearing; and
- b. Ensure that Escrow Agent not be required to deliver the original (as opposed to a copy) of the Source Code if Escrow Agent may need to retain the original in its possession to fulfill any of its other duties under this Agreement.

## ARTICLE 8 -- GENERAL PROVISIONS

8.1 Escrow Agent Representation. Escrow Agent hereby represents and warrants to Beneficiary and Depositor that (a) to the best knowledge of Escrow Agent neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery or fraud in connection with any public contract in the State of Texas or any other jurisdiction, except as has been specifically disclosed in writing to Beneficiary and Depositor, and (b) should any such conviction or indictment be obtained or any such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or



investigation, Escrow Agent will immediately disclose it in writing to Beneficiary and Depositor.

8.2 Entire Agreement. This Agreement, which includes Exhibits described herein, embodies the entire understanding among the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. Escrow Agent is not a party to the Contract between Depositor and Beneficiary and has no knowledge of any of the terms or provisions of the Contract except for Article 19 of the Contract regarding Dispute Resolution which Escrow Agent acknowledges having received. Escrow Agent's only obligations to Depositor or Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the Parties, except that Exhibit A need not be signed by Beneficiary and Exhibit B need not be signed.

8.3 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Exhibit B. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

8.4 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Depositor and Beneficiary; and Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Escrow Agent receives unambiguous and authoritative written evidence of the change of Parties.

8.6 Regulations. Depositor and Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Source Code may be delivered in accordance with the provisions of this Agreement.

8.7 Liability. No member, officer, or employee of Beneficiary, Depositor or Escrow Agent shall be liable personally hereunder or by reason hereof.

8.8 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which, when executed,

shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement.

***[signatures on next page]***

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Source Code Escrow Agreement as of the date first written above.

\_\_\_\_\_  
Depositor

TEXAS DEPARTMENT OF  
TRANSPORTATION

Beneficiary

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Escrow Agent

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

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

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

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

## EXHIBIT A

### DESCRIPTION OF ESCROWED MATERIAL

Depositor Company Name \_\_\_\_\_  
Account Number \_\_\_\_\_  
Product Name \_\_\_\_\_ Version \_\_\_\_\_  
(Product Name will appear as the Exhibit A Name on Account History report)  
Owner of Product \_\_\_\_\_  
\_\_\_\_\_  
(Name, address, tel. no., e-mail address)

### SOURCE CODE DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape _____mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

### PRODUCT DESCRIPTION:

Environment \_\_\_\_\_

### SOURCE CODE INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

I certify for **Depositor** that the above described **Escrow Agent** has inspected and accepted Source Code have been transmitted to \_\_\_\_\_: \_\_\_\_\_ the above materials (*any exceptions are*

*noted above*):

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Date \_\_\_\_\_

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Date Accepted \_\_\_\_\_  
Exhibit A# \_\_\_\_\_

Send materials to: Escrow Agent, \_\_\_\_\_,  
\_\_\_\_\_ ( ) - \_\_\_\_\_

## EXHIBIT B

### DESIGNATED CONTACT

Account Number \_\_\_\_\_  
Notices, deposit material returns and communications to Depositor should be addressed to: \_\_\_\_\_  
Invoices to Depositor pursuant to Section 4.4(a) should be addressed to: \_\_\_\_\_

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

Address: \_\_\_\_\_

Designated Contact: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_

E-mail: \_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_

E-mail: \_\_\_\_\_

Verification Contact: \_\_\_\_\_

Notices and communications to Beneficiary should be addressed to: \_\_\_\_\_

Invoices to Beneficiary should be addressed to: \_\_\_\_\_

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

Address: \_\_\_\_\_

Designated Contact: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

P.O.#, if required: \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

Requests from Depositor or Beneficiary to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor or Beneficiary.

Contracts, Source Code, notices, invoice  
inquiries and fee remittances to Escrow  
Agent should be addressed to:

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

Telephone: ( ) -

Facsimile: ( ) -

E-mail: \_\_\_\_\_

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

## EXHIBIT X

### KEY PERSONNEL\*

- (a) Project Manager
- (b) Deputy Project Manager – System Design
- (c) Deputy Project Manager – System Installation
- (d) Deputy Project Manager – Civil Construction
- (e) System Design Manager\*
- (f) Lead ETC System Integration Designer
- (g) Lead Violation Enforcement System Designer
- (h) Lead Automatic Vehicle Detection and Classification Designer
- (i) System Test Manager\*
- (j) Maintenance Manager\*
- (k) Engineering Professional Services Quality Control Manager (PSQCM)\*
- (l) Civil Construction Quality Control Manager (CQCM)\*
- (m) Engineering Professional Services Quality Review Manager (PSQRM)\*
- (n) Civil Construction Quality Acceptance Manager (CQAM)\*
- (o) Toll Systems Services Quality Control Manager (TSSQCM)\*

\* Note: Asterisk denotes other Key Personnel positions for which liquidated damages may be due pursuant to Section 7.4.5 of the Agreement.

Note that initial designations in Proposal apply to Pilot System 1. Refer to Section 7.4.5 for permissible changes in Key Personnel for subsequent Pilot Systems or Project Segments.



## EXHIBIT Y

### LIQUIDATED DAMAGES: SYSTEM ACCEPTANCE FOR PILOT SYSTEMS AND METHODOLOGY

Liquidated Damages per Day for failure to achieve System Acceptance by the System Acceptance Completion Deadline for the LP 49, US 281 and LP 1604 Pilot Systems shall be payable in the following amounts:

<b>LP 49 (Pilot System #1):</b>	<b>\$3,100.00 per day</b>
<b>US 281 (Pilot System #2):</b>	<b>\$4,500.00 per day</b>
<b>LP 1604 (Pilot System #3):</b>	<b>\$24,300.00 per day</b>

The Liquidated Damages were calculated with reference to TxDOT's most current traffic and revenue study/data for each Pilot System as the difference between projected annual gross revenue and projected annual operations costs, divided by the number of revenue days per year used in the study/data. plus a \$3,000.00 per day facility service cost (which is intended to cover TxDOT's anticipated additional internal overhead and administrative costs, as well as anticipated additional outside consultant costs):

$$[(\text{Projected Annual Gross Revenue}) - (\text{Projected Annual Operations Costs}) / \text{Revenue Days per year}] + \$3,000.00$$
 Using this formula, the Liquidated Damages for each of the Pilot Systems referenced above were calculated as follows:

<u>Pilot System</u>	<u>Gross Revenue</u>	<u>Operations Cost</u>	<u>Revenue Days</u>
LP 49	\$105,300	\$70,380	276
LD = $(\$105,300 - \$70,380) / 276 + \$3,000 = \$3,100.00$			
US 281	\$1,230,312	\$792,655	289
LD = $(\$1,230,312 - \$792,655) / 289 + \$3,000 = \$4,500$			
LP 1604	\$9,703,845	\$3,535,048	289
LD = $(\$9,703,845 - \$3,535,048) / 289 + \$3,000 = \$24,300$			

Liquidated Damages for failure to achieve System Acceptance by the applicable Completion Deadline shall be calculated in the same manner for each Project Segment and shall be set forth in an exhibit to the relevant Project Segment Supplement.

**EXHIBIT Z**

**FORM OF RAYTHEON NON-DISCLOSURE AGREEMENT**

[see attached]

## PROPRIETARY INFORMATION AGREEMENT

This Agreement is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between RAYTHEON COMPANY, a corporation organized and existing under the laws of the State of Delaware and having offices at \_\_\_\_\_ (hereinafter called "Raytheon"), and \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_ and having offices at \_\_\_\_\_ (hereinafter called "XYZ").\*

### WITNESSETH:

WHEREAS, Raytheon and XYZ believe that it will be mutually beneficial for them to exchange certain proprietary information as described below in connection with and for the purposes described below; and

WHEREAS, the parties believe that it will be mutually beneficial for Raytheon to disclose to XYZ certain proprietary information related to \_\_\_\_\_ (hereinafter "Raytheon Proprietary Information") for purposes of allowing XYZ to evaluate and, where appropriate in light of and as contemplated by the authorized purposes, to use the Raytheon Proprietary Information in connection with and for purposes of \_\_\_\_\_; and

WHEREAS, the parties believe that it will be mutually beneficial for XYZ to disclose to Raytheon certain proprietary information related to \_\_\_\_\_ (hereinafter "XYZ Proprietary Information") for purposes of allowing Raytheon to evaluate and, where appropriate in light of and as contemplated by the authorized purposes, to use the XYZ Proprietary Information in connection with and for purposes of \_\_\_\_\_; and

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\* Replace XYZ throughout with appropriate name or acronym.

WHEREAS, Raytheon Proprietary Information and XYZ Proprietary Information are hereinafter sometimes singularly and collectively referred to as "Proprietary Information"; and

WHEREAS, the parties desire to establish certain understandings to protect Proprietary Information from unauthorized use or disclosure.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, the parties agree as follows:

1. The exclusive points of contact with respect to the transmission and control of Proprietary Information exchanged hereunder are designated by the respective parties as follows:

**RAYTHEON:**

**XYZ:**

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

Each party may change its designated point of contact by written notice to the other.

2. In order for information to be afforded protection under this Agreement, the disclosing party ("Discloser") shall identify any Proprietary Information disclosed by it hereunder as follows:
  - (a) all documents and other tangible materials shall be marked with an appropriate restrictive legend which indicates the proprietary nature of the material and the Discloser's interest therein; and
  - (b) all other disclosures made by the Discloser must be identified as proprietary at the time of disclosure and must thereafter be reduced to a written listing or summary marked with an appropriate restrictive legend and delivered to the receiving party ("Recipient") within one (1) month after the initial disclosure; during this one (1) month period, such information so disclosed shall be provided the same protection as provided Proprietary Information marked with a restrictive legend in accordance with Section 2(a) above. Such listing or summary may be provided by e-mail or similar electronic form.
3. With respect to Proprietary Information disclosed in accordance with the requirements of Section 2 above, the Recipient, for the period specified in Article 5 below and except as otherwise provided below, will:
  - (a) hold it in confidence from the date of receipt under this Agreement;
  - (b) use it only for the purposes identified above and/or for such other purposes as may be subsequently authorized in writing by Discloser;
  - (c) make it available, subject to Section 12 below, only to its employees and agents who have a need to know in order to carry out their duties in connection with the purposes authorized herein and who have suitable obligations of confidentiality applicable to such Proprietary Information; and
  - (d) not otherwise use or disclose it except as expressly authorized in this Agreement or except as otherwise authorized in writing by the Discloser and except that if the purposes authorized above relate to a program, proposal or contract with or for the United States Government, the Recipient may disclose Proprietary Information to the United States Government as necessary for the authorized purposes if the disclosure bears the appropriate restrictive legend and proprietary information notice permitted by the applicable government regulations related to the protection of proprietary information.

4. The obligations of Recipient with respect to Discloser's Proprietary Information shall not apply to:
- (a) information which, at the time of disclosure by Discloser to Recipient hereunder, is in the public domain;
  - (b) information which, after disclosure by Discloser to Recipient hereunder, becomes part of the public domain through no fault of Recipient;
  - (c) information which was rightfully in Recipient's possession at the time of disclosure by Discloser to Recipient hereunder and which is not subject to prior continuing obligations of confidentiality by Recipient to Discloser;
  - (d) information which is rightfully disclosed to Recipient by a third party having the lawful right to do so;
  - (e) information which has been or is hereafter released by Discloser to others without restriction; or
  - (f) information which is independently developed by or for Recipient without use of Proprietary Information received from Discloser pursuant to this Agreement.
5. The obligations of Recipient under Section 3 of this Agreement with respect to Discloser's Proprietary Information shall, in any event, expire (      ) years from the date of this Agreement set forth above.
6. (a) Recipient's obligations under Section 3 of this Agreement with respect to the protection of Discloser's Proprietary Information shall be to use the same reasonable degree of care which Recipient uses to protect its own information of similar character and in no event shall Recipient be liable for inadvertent disclosure provided that the aforementioned degree of care has been used and provided that, upon discovery of any such inadvertent disclosure, Recipient shall endeavor to correct the effects thereof and to prevent any further inadvertent disclosure.
- (b) Notwithstanding anything in Section 3 above to the contrary but subject to Section 12 below, (i) Recipient may disclose Discloser's Proprietary Information to Recipient's affiliates having a need to know for the purposes authorized above; provided that such affiliates have first agreed to be bound by the applicable provisions of this Agreement in the same way and to the same extent as Recipient is bound; and, (ii) subject to Section 12 below, Recipient may also disclose Discloser's Proprietary Information to third parties such as vendors, subcontractors, legal counsel, insurers and similar third parties to the extent necessary in connection with the use of such Proprietary Information for the authorized purposes provided that such third parties are bound by appropriate obligations of confidentiality.
- (c) Notwithstanding anything in Section 3 above to the contrary, Recipient may also disclose Discloser's Proprietary Information to the extent required to comply with a court order, administrative subpoena or order, or applicable governmental regulation

or statutory requirement which appears to be lawful on its face, provided that Recipient gives Discloser timely notice, where possible, of the contemplated disclosure so as to give Discloser an opportunity to intervene to preserve the confidentiality of the information.

7. In no event shall either party, its affiliates, or any of the parties mentioned in Section 6 (b) above, or any of their respective officers, directors or employees be liable for any multiple or punitive damages.
8. All Proprietary Information furnished hereunder shall remain the property of the disclosing party and any tangible material containing same which may be provided by Discloser to Recipient pursuant to this Agreement shall be returned to Discloser or destroyed promptly at Discloser's request together with all copies, excerpts, and/or summaries made thereof by Recipient; except that Recipient may retain one (1) copy of such material in limited access files as a record of its obligations hereunder. Upon request, Recipient shall send Discloser a destruction certificate in the case where Recipient has been instructed to destroy such materials.
9. Except as provided in Section 3 above in connection with the authorized purposes, no license under any patents, copyrights, maskworks, or any other proprietary right is granted or conveyed by Discloser pursuant to this Agreement.
10. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to its internal principles of choice of law.
11. This Agreement shall apply to Proprietary Information disclosed during the period which begins as of the date of this Agreement first written above and expires on .
12. Without regard to the duration of its other obligations hereunder, Recipient shall control access to, and use of, information received hereunder from Discloser and the direct product thereof in accordance with all applicable U.S. Export Laws and Regulations, including but not limited to the International Traffic in Arms Regulations. In connection with and without limiting the general applicability of the foregoing, Recipient shall not make or permit disclosure of information received from the Discloser or the direct product thereof to nationals of prohibited countries or to any Foreign Person (as defined in Section 120.16 of the International Traffic in Arms Regulations) unless (a) Recipient has received Discloser's express written consent to do so and (b) necessary export licenses have been obtained.
13. Any notice under, or in connection with, this Agreement shall be in writing and shall be deemed to have been given when received by the party to which said communication is directed at its address set forth below or at such other address as such party may have theretofore designated in writing to the other party hereto. A receipt evidencing delivery of certified or registered mail shall constitute evidence of receipt. Any notice requiring prompt action shall be contemporaneously sent by facsimile transmission or electronic mail. For purposes of giving notices under this Agreement, the addresses of the parties are as follows:

**For Raytheon**

Raytheon Company

**For XYZ**

Attention: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

14. This Agreement sets forth the complete understandings between the parties relative to the exchange of the subject Proprietary Information and its protection, and this Agreement supersedes any prior written or oral agreements between the parties related to the protection of the subject Proprietary Information and may not be amended or modified except by subsequent agreement in writing executed by duly authorized officers or representatives of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

**RAYTHEON COMPANY**

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

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

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

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

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

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

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

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