

**AMENDED AND RESTATED
FACILITY AGREEMENT**

**NORTH TARRANT EXPRESS
SEGMENTS 3A, 3B AND 3C FACILITY**

Between

Texas Department of Transportation

and

**NTE Mobility Partners Segments 3 LLC,
a Delaware Limited Liability Company**

Dated as of [_____], 2019

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AMENDED AND RESTATED FACILITY AGREEMENT

NORTH TARRANT EXPRESS SEGMENTS 3A, 3B & 3C FACILITY

This Amended and Restated Facility Agreement (this "Agreement") is entered into and effective as of [____], 2019 by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and NTE Mobility Partners Segments 3 LLC, a Delaware Limited Liability Company ("Developer").

RECITALS

A. The State of Texas desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and the Texas Legislature has enacted Transportation Code, Chapter 223, Subchapter E (the "Code"), and TxDOT has adopted Sections 27.1-27.9 of Title 43, Texas Administrative Code (the "Rules"), to accomplish that purpose.

B. The Code grants TxDOT the authority to enter into agreements with private entities to develop, design, construct, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Code and the Rules, TxDOT issued a Request for Qualifications on December 8, 2006, as amended.

D. TxDOT received seven responsive qualification submittals by March 15, 2007, and subsequently shortlisted four responsive proposers.

E. On March 3, 2008, TxDOT issued to the shortlisted proposers a Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the North Tarrant Express Project (as subsequently amended by addenda, the "RFP").

F. As part of the RFP, TxDOT required that shortlisted proposers commit to entering into a comprehensive development agreement (the "Concession CDA") to develop, design, construct, finance, operate and maintain, at a minimum, Segment 1 and such other portions of Segment 2 of the North Tarrant Express Project as were set forth in the Proposal and a comprehensive development agreement for the remaining portions of the North Tarrant Express Segments 2, 3A, 3B, 3C and 4 (the "CDA for Segments 2-4").

G. On December 1, 2008, TxDOT received responses to the RFP, including the response of Meridiam Infrastructure (SCA) SICAR and Cintra Concesiones de Infraestructuras de Transporte, S.A. on behalf of Developer (the "Proposal").

H. An RFP evaluation committee comprised of TxDOT staff determined that Developer was the proposer which best met the selection criteria contained in the RFP and that its Proposal was the one which provided the best value to the State.

I. On January 29, 2009, the Texas Transportation Commission accepted the recommendation of the Texas Turnpike Authority Director and the RFP evaluation committee and authorized TxDOT staff to negotiate the comprehensive development agreements; and on

June 23, 2009, TxDOT and the Developer entered into the Concession CDA and the CDA for Segments 2-4.

J. On July 6, 2011, TxDOT and the Developer agreed upon a Facility Implementation Plan for the development of the NTE Segments 3A & 3B Facility in accordance with the terms of the CDA for Segments 2-4.

K. Pursuant to the Facility Implementation Plan and in accordance with the CDA for Segments 2-4, TxDOT and the Developer negotiated the terms of a certain Facility Agreement, North Tarrant Express Segments 3A and 3B Facility, dated as of March 1, 2013 (the "2013 Agreement").

L. The 2013 Agreement, the other FA Documents, the Facility Trust and Security Instruments, the Intellectual Property Escrows and the Lease Escrow Agreement collectively constitute a comprehensive development agreement as contemplated under the Code and the Rules.

M. The Executive Director was authorized to enter into the 2013 Agreement pursuant to the Code, the Rules and the Texas Transportation Commission Minute Order 113159.

N. The Parties have previously amended the 2013 Agreement pursuant to Amendments No. 1 through 4 and 6 thereto (for the avoidance of doubt, there was no Amendment No. 5).

O. Pursuant to Sections 14.1.1.3 and 14.1.2 of the 2013 Agreement, TxDOT issued to Developer on February 10, 2016 a Request for Change Proposal to add, as a Facility Extension, Segment 3C of the Facility to the scope of work.

P. Following the procedures for developing and evaluating a Request for Change Proposal under Sections 14.1.2 and 14.1.3 of the 2013 Agreement, TxDOT and Developer entered into a Change Order Agreement dated _____, 2018 for the purpose of establishing the terms and conditions under which the Parties would enter into a TxDOT Change for the Segment 3C Facility Segment (the "Change Order Agreement"). The Change Order Agreement set forth the agreement of the Parties to enter into amendments to the 2013 Agreement and related FA Documents upon satisfaction of conditions precedent set forth in the Change Order Agreement.

Q. For convenience of administration, the Parties have agreed to consolidate the amendments to the 2013 Agreement contemplated by the Change Order Agreement and Amendments Nos. 1 through 4 and 6 to the 2013 Agreement in this Amended and Restated Facility Agreement (this "Agreement"), which hereby incorporates all the terms of the 2013 Agreement as amended by Amendments No. 1 through 4 and 6 thereto and as further amended hereby to add Segment 3C as a Facility Extension in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the Work to be financed and performed by Developer, the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

**ARTICLE 1. DEFINITIONS; FA DOCUMENTS; ORDER OF PRECEDENCE;
PRINCIPAL FACILITY DOCUMENTS**

1.1 Definitions

Definitions for the terms used in this Agreement and the other FA Documents are contained in Exhibit 1.

1.2 FA Documents; Order of Precedence

The term "FA Documents" shall mean the documents listed in Section 1.2.1. Each of the FA Documents is an essential part of the agreement between the Parties. The FA Documents are intended to be complementary and to be read together as a complete agreement.

1.2.1 Subject to Section 1.2.2, in the event of any conflict, ambiguity or inconsistency among the FA Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.1.1 Change Orders, Agreement amendments and Lease amendments, and all exhibits and attachments thereto;

1.2.1.2 Book 1 (this Agreement, including all exhibits and the executed originals of exhibits that are contracts, except Exhibit 2);

1.2.1.3 Book 2 (Technical Provisions) amendments, and all exhibits and attachments to such amendments;

1.2.1.4 Book 2 (Technical Provisions), and all exhibits and attachments to the Technical Provisions;

1.2.1.5 Book 3 General Provisions (Technical Provisions) amendments, and all exhibits and attachments to such amendments;

1.2.1.6 Book 3 General Provisions (Technical Provisions), and all exhibits and attachments;

1.2.1.7 Book 3 Manuals (Technical Documents) amendments; provided that TxDOT in its sole discretion may designate that such amendments or portions thereof take precedence over the Technical Provisions to the extent provided in Sections 7.2.6 and 8.1.2.2;

1.2.1.8 Book 3 Manuals (Technical Documents);

1.2.1.9 Developer's commitments set forth in Exhibit 2, including Developer's schematic plan of the Facility; provided that, to the extent specified in Exhibit 2, certain provisions therein shall supersede the specified provisions of the other FA Documents.

1.2.2 If the FA Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality, manner or method of performing the Work, establish better Good Industry Practice or use more stringent standards will prevail. Additional details in a lower priority FA Document shall be given effect except to the extent they irreconcilably

conflict with requirements, provisions and practices contained in the higher priority FA Document. If the FA Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence.

1.2.3 Where there is an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Facility set forth in one or more manual(s) or publication(s) referenced within a FA Document or set of FA Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless TxDOT in its sole discretion approves otherwise in writing. If there is an irreconcilable conflict between manuals or publications referenced in FA Documents of differing priorities, the order of precedence set forth in Section 1.2.1 will apply. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. TxDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.2.4 The TxDOT Tolling Services Agreement is an FA Document and is therefore supplemented by terms and provisions of this Agreement that expressly apply to FA Documents. Wherever this Agreement contains provisions on a subject matter that would apply to the TxDOT Tolling Services Agreement by virtue of it being an FA Document but the TxDOT Tolling Services Agreement contains provisions on the same subject matter (including limitations of liability, Collateral Agent's rights to a new tolling services agreement, and TxDOT's rights to assign, etc.), the provisions of the TxDOT Tolling Services Agreement shall exclusively govern and control.

1.3 Order of Precedence of Facility Management Plan; Survival of Facility Implementation Plan

1.3.1 In the event of any conflict, ambiguity or inconsistency between the Facility Management Plan and any of the FA Documents, the latter shall take precedence and control.

1.3.2 Except for the rights and obligations of TxDOT and Developer under Section 4.2 of the Facility Implementation Plan, which rights and obligations shall survive the execution of this Agreement and shall remain in full force and effect up to and until immediately preceding Financial Close, the Facility Implementation Plan is hereby superseded and replaced in its entirety by this Agreement.

1.4 Principal Facility Documents; Facility Trust and Security Instruments

1.4.1 Prior to or at Financial Close, Developer entered into the Facility Trust Agreement in substantially the form attached as Exhibit 30 to the 2013 Agreement and the other Facility Trust and Security Instruments to which Developer is a party. The Facility Trust Agreement was amended and restated in its entirety as of July 7, 2017, and may be further amended as of the Amendment Effective Date in substantially the form attached as Exhibit 30, if necessary to include the Segment 3C Facility Segment. TxDOT is either a party to the Facility Trust Agreement or an express, intended third party beneficiary thereof. Developer at

its expense shall be solely responsible for posting any indemnity bond or other security the trustee may require in connection with its services under the Facility Trust Agreement.

1.4.2 If TxDOT is not a signatory thereto, then except with TxDOT's prior written approval in its sole discretion, Developer shall not during the Term (a) terminate or permit termination of the Facility Trust Agreement, (b) appoint or approve a substitute or replacement trustee thereunder, (c) agree to any amendment of any provisions of the Facility Trust Agreement, (d) in any material respect waive, or fail to enforce, any provision of the Facility Trust Agreement or (e) oppose or interfere with TxDOT's exercise of its third party beneficiary rights against the trustee thereunder.

1.4.3 TxDOT and Developer covenant and agree to perform all of their respective obligations under or in connection with the Facility Trust and Security Instruments, including any custodial arrangement that may be put into effect pursuant to Section 19.10.4.

1.5 Reference Information Documents

1.5.1 TxDOT has provided and disclosed to Developer the Reference Information Documents. Without limiting the foregoing, Developer acknowledges receipt of the Reference Information Documents relating to the Segment 3C Facility Segment listed in Exhibit 32 to this Agreement (which list is not necessarily all-inclusive). The Reference Information Documents are not mandatory or binding on Developer. Developer is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the FA Documents, Governmental Approvals or Law.

1.5.2 TxDOT shall not be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.5.3 TxDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the FA Documents, Governmental Approvals or Laws. Except as expressly set forth herein, Developer shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in the Reference Information Documents.

ARTICLE 2. GRANT OF CONCESSION; TERM

2.1 Grant of Concession

2.1.1 Pursuant to the provisions of the Code and the Rules and subject to the terms and conditions of the FA Documents, TxDOT hereby grants to Developer the exclusive right, and Developer accepts the obligation, to finance, develop, design and construct the Facility described in Section 1 of the Technical Provisions (other than the TxDOT Works), and to enter into the Lease in the form attached as Exhibit 3 for the Facility and Facility Right of Way.

2.1.2 From and after issuance of NTP1, Developer and its authorized Developer-Related Entities shall have the right and license to enter onto the Facility Right of Way for the Segment 3A Facility Segment and other lands owned by TxDOT related thereto for purposes of

carrying out its obligations under this Agreement. From and after issuance of NTP1 (3C), Developer and its authorized Developer-Related Entities shall have the right and license to enter onto the Facility Right of Way for the Segment 3C Facility Segment and other lands owned by TxDOT related thereto for purposes of carrying out its obligations under this Agreement. Developer's sole rights of entry onto the Facility Right of Way for the Segment 3B Facility Segment prior to the Service Commencement Date for such Facility Segment are set forth in Sections 25.1.8 and 25.3.4.

2.1.3 TxDOT and Developer acknowledge that they have executed two counterparts of the Lease and one counterpart of the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating Commencement Date for the Segment 3A Facility Segment, but not before then, and as a ministerial act, TxDOT and Developer shall date the Lease and Memorandum of Lease, obtain acknowledgment of their signatures on the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Segment 3A Facility Segment and each Party shall deliver to the other Party, and the other Party shall accept, the Lease and Memorandum of Lease. Thereupon, the Lease shall take effect and the right of entry under Section 2.1.2 respecting the Segment 3A Facility Segment shall automatically cease to have effect. Developer, at its expense, shall have the right to record the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of the Memorandum of Lease bearing all recording information.

2.1.4 The Lease and Memorandum of Lease are subject to amendment as follows:

2.1.4.1 TxDOT and Developer acknowledge that they have executed two counterparts of an amendment to the Lease and one counterpart of an amendment to the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating Commencement Date for the Segment 3B Facility Segment, but not before then, and as a ministerial act, TxDOT and Developer shall date the amendment to the Lease and amendment to the Memorandum of Lease, obtain acknowledgment of their signatures on the amendment to the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Segment 3B Facility Segment and each Party shall deliver to the other Party, and the other Party shall accept, the amendment to the Lease and amendment to the Memorandum of Lease. Thereupon, the Lease shall take effect respecting the Segment 3B Facility Segment and the right of entry under Section 25.3.4 respecting the Segment 3B Facility Segment shall automatically cease to have effect. Developer, at its expense, shall have the right to record the amendment to the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of the amendment to the Memorandum of Lease bearing all recording information.

2.1.4.2 TxDOT and Developer acknowledge that they have executed two counterparts of an additional amendment to the Lease and one counterpart of an additional amendment to the Memorandum of Lease and placed them in a neutral escrow for safekeeping pursuant to the Lease Escrow Agreement. Upon the Operating Commencement Date for the Segment 3C Facility Segment, but not before then, and as a ministerial act, TxDOT and Developer shall date such amendment to the Lease and such amendment to the Memorandum of Lease, obtain acknowledgment of their signatures on such amendment to the Memorandum of Lease by a Texas notary public, attach all legal descriptions pertaining to the Segment 3C Facility Segment and each Party shall deliver to the other Party, and the other Party shall accept, such amendment to the Lease and such amendment to the Memorandum

of Lease. Thereupon, the Lease shall take effect respecting the Segment 3C Facility Segment and the right of entry under Section 2.1.2 respecting the Segment 3C Facility Segment shall automatically cease to have effect. Developer, at its expense, shall have the right to record such amendment to the Memorandum of Lease upon its delivery to Developer, and shall promptly deliver to TxDOT a conformed copy of such amendment to the Memorandum of Lease bearing all recording information. The Parties acknowledge that the legal description in such amendment to the Lease and amendment to the Memorandum of Lease will be preliminary. The Parties shall cooperate and use diligent efforts to execute and deliver by the Final Acceptance Deadline for the Segment 3C Facility Segment (or such later date as may be mutually agreed by the Parties) a further amendment to the Lease and a further amendment to the Memorandum of Lease setting forth the final legal description for the Segment 3C Facility Segment, and Developer shall thereafter promptly record such amendment to the Memorandum of Lease.

2.1.5 Developer shall have the exclusive right and obligation, during the Operating Period, to use, manage, operate, maintain and repair the Facility (provided that nothing in this clause shall be construed as releasing TxDOT from any of its obligations contemplated in Section 25.7.2), and to perform Renewal Work and Upgrades, pursuant to the terms of the Lease, this Agreement, the other FA Documents and the Principal Facility Documents, except as otherwise contemplated in Section 25.1.

2.1.6 Developer shall have the exclusive right and obligation, for each Facility Segment, commencing on the Service Commencement Date for such Facility Segment and ending at the end of the Term, to toll the Managed Lanes of the Facility pursuant to the terms of this Agreement, the other FA Documents and the Principal Facility Documents.

2.1.7 Developer's rights granted in this Section 2.1 are limited by and subject to the terms and conditions of the FA Documents, including the following:

2.1.7.1 Receipt of all Governmental Approvals necessary for the Work to be performed and satisfaction of any requirements applicable under the Governmental Approvals (including the NEPA Approval) for the Work to be performed; and

2.1.7.2 TxDOT's sole ownership of fee simple title to the Facility and Facility Right of Way and all improvements constructed thereon, subject to Developer's Interest, including Developer's leasehold estate under the Lease.

2.2 Term of Concession

2.2.1 This Agreement shall take effect on the Effective Date, and shall remain in effect until expiration of the Lease or earlier termination of this Agreement and (if in effect) the Lease (the "Term"). The term of the Lease shall commence upon the Operating Commencement Date that first occurs and shall continue until June 22, 2061; provided that the Lease shall be subject to earlier termination in accordance with the terms of this Agreement and the Lease shall be subject to extension under Section 13.1.4.

2.2.2 TxDOT and Developer acknowledge their mutual intent that, despite TxDOT's retention of fee title to the Facility and the Facility Right of Way, despite Developer's leasehold estate and interest therein, and despite the payment by Developer of 100% of the total capital improvement costs of the Facility, excluding the TxDOT Works and the GP Capacity Improvements, Developer be treated, to the maximum extent permitted by Law, as the owner

for federal income tax purposes of such portion of the Facility for which Developer is not reimbursed its total capital improvement costs for the Facility by the Public Funds Amount [and the Segment 3C Public Funds Amount]. TxDOT and Developer acknowledge their mutual intent that, despite the payment by Developer of 100% of the total capital improvement costs of the Facility, the payment of the Public Funds Amount [and/or the Segment 3C Public Funds Amount] by TxDOT to Developer is a reimbursement of the portion of Developer's total capital improvement costs of the Facility that are expended by Developer on behalf of, and for the benefit of, TxDOT and shall not be treated as compensation or consideration of any kind paid by TxDOT to Developer for federal income tax purposes. TxDOT and Developer acknowledge their mutual intent that the grant to Developer of the exclusive right and obligation to toll the Managed Lanes of the Facility for the Facility Term pursuant to Section 2.1.6 is intended for federal income tax purposes to be the grant by TxDOT of an exclusive right and franchise to toll the Managed Lanes of the Facility for and during the Term. TxDOT will not file any documentation with the U.S. government inconsistent with this intention. (This provision is not intended to have any bearing on ownership status under Environmental Laws regarding Hazardous Materials or on allocation of risk and liability under the FA Documents.)

2.2.3 The Parties acknowledge Developer's rights and obligations under the FA Documents to finance, manage, operate, maintain, repair, toll and perform Renewal Work and Upgrades commence on the Effective Date notwithstanding the later commencement of the Lease, subject to, among other conditions, issuance of NTP1, NTP2, NTP1 (3C), NTP2 (3C), NTP GP, NTP GTBR, NTP 3C UCI and satisfaction of the conditions precedent to Service Commencement set forth in this Agreement.

ARTICLE 3. TOLLS

3.1 Authorization to Toll

3.1.1 Except as provided in Section 3.1.3, Developer shall have the exclusive right to (a) impose tolls upon the Users of the Managed Lanes, (b) establish, modify and adjust the rate of such tolls, and (c) enforce and collect tolls from the Users of the Managed Lanes, all in accordance with and subject to the terms and conditions contained in this Agreement, including those set forth in this Article 3 and in Exhibit 4.

3.1.2 The foregoing authorization includes the right, to the extent permitted by applicable Law, and subject to the terms and conditions set forth in Exhibit 4 and the terms, rules and regulations that may be established for uniform account maintenance and reconciliation among operators of electronically tolled facilities within and outside the State, to fix, charge, enforce and collect Incidental Charges with respect to electronic tolling accounts managed by Developer or its Contractor, and Video Transaction Toll Premiums; provided that whenever the TxDOT Tolling Services Agreement is in effect, TxDOT, or its permitted subcontractor, shall exclusively fix, charge, enforce and collect Incidental Charges and Video Transaction Toll Premiums. Except for toll violation penalties and Incidental Charges in effect under Exhibit 4, the amount of any Incidental Charges imposed by Developer when the TxDOT Tolling Services Agreement is not in effect shall not exceed the amount reasonably necessary for Developer to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to the items, services and work for which they are levied.

3.1.3 Developer has no authority or right to impose any toll, fee, charge or other amount (a) on any Managed Lanes of a Facility Segment until the Service Commencement Date for such Facility Segment or (b) for use of any portion of the Facility other than the

Managed Lanes. Developer has no authority or right to impose any fee, charge or other amount for use of the Facility other than the tolls, including Video Transaction Toll Premiums, and Incidental Charges specifically authorized by this Article 3.

3.1.4 Developer shall implement toll collection systems that charge, debit and collect tolls only at or through the electronic tolling facilities physically located on the Facility Right of Way or through global positioning system technologies or other remote sensing technologies that charge, debit and collect tolls only for actual vehicular use of the Managed Lanes provided that such toll collection method is in compliance with the requirements of Section 8.7.

3.1.5 Except as provided otherwise in Sections 3.1.7, 3.3 and 3.4 and Exhibit 4, and except for toll violations not reasonably collectible, Developer shall require payment of tolls for use of the Managed Lanes.

3.1.6 Except as otherwise provided in Section 19.10, nothing in this Agreement shall obligate or be construed as obligating TxDOT to continue or cease tolls after the end of the Term.

3.1.7 With TxDOT's consent, Developer may allow for the use of the Managed Lanes or any portion thereof for a limited period of time after the applicable Service Commencement Date without imposing any fee or charge, provided Developer complies with measures to ensure that the Facility or such portion thereof is not deemed under State Law to be the conversion of a free facility to a tolled facility at the end of the free period. At Developer's request, TxDOT will confer with Developer to help identify measures to prevent conversion.

3.2 Changes in User Classifications

3.2.1 Developer has irrevocably selected a User Classification system as set forth in Exhibit 4. Developer may not change from the system selected, and may not change, add to or delete any of the User Classifications within the selected system as set forth in Exhibit 4, without TxDOT's express prior written consent pursuant to this Section 3.2.

3.2.2 If Developer desires to change from the system selected, or change, add to or delete any of the User Classifications within the selected system, Developer shall apply to TxDOT for permission to implement such change, addition or deletion at least 210 days prior to the proposed effective date of such change. Such application shall set forth:

- 3.2.2.1** Each proposed change, addition or deletion;
- 3.2.2.2** The date each change, addition or deletion shall become effective;
- 3.2.2.3** The length of time each change, addition or deletion shall be in effect;
- 3.2.2.4** The reason Developer requests each change, addition or deletion;
- 3.2.2.5** The effect each change, addition or deletion is likely to have upon Users and traffic patterns;

3.2.2.6 A thorough report and analysis of the effect each change, addition or deletion is anticipated to have on Developer's internal rate of return (determined using the Financial Model Formulas), including the effects on the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, on the Base Case Financial Model) and on the assumptions and data therein; and

3.2.2.7 Such other information and data as TxDOT may reasonably request.

3.2.3 Developer's application shall be deemed granted without conditions unless within 120 days after receipt of a completed application TxDOT advises Developer that it has granted Developer's application with conditions or denied Developer's application. TxDOT may deny an application or impose conditions to granting an application in its sole discretion, including conditioning approval on new or an adjustment of compensation for TxDOT under this Agreement. TxDOT's decision shall not be subject to dispute resolution. If Developer finds TxDOT's conditions to the grant of an application to be unacceptable, Developer may withdraw the application and continue with the then-existing User Classifications. If Developer resubmits an application after rejection or imposition of conditions, the above procedures shall apply to the resubmitted application.

3.2.4 If Developer's application is deemed granted without conditions or is granted subject to conditions acceptable to Developer, then:

3.2.4.1 Developer may implement such change in User Classification on the effective date set forth in the application, subject to such conditions, if any, imposed by TxDOT, and subject to first giving notice to the public of the change, addition or deletion in the same manner as provided in Sections D.2.a and D.2.b of Exhibit 4; and

3.2.4.2 The Parties shall promptly amend (a) Exhibit 4 to incorporate the change, addition or deletion and (b) this Agreement as necessary, in accordance with the accepted conditions.

3.3 Exempt Vehicles

3.3.1 Developer shall not levy or impose a toll, including Video Transaction Toll Premiums, or Incidental Charges, and shall not permit a toll, including Video Transaction Toll Premiums, or Incidental Charges to be levied or imposed, for or in connection with use of the Facility by any Exempt Vehicle.

3.3.2 Developer shall implement means to accurately identify and track Exempt Vehicles in order to comply with their exemption from tolls, including Video Transaction Toll Premiums, and Incidental Charges.

3.4 Emergency Suspension of Tolls

3.4.1 In the event TxDOT designates the Facility or a portion of the Facility (a) for immediate use as an Emergency evacuation route or (b) as a route to respond to a disaster proclaimed by the Governor of Texas or his/her designee, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs

and expenses attributable to such order, provided that during any period for which tolling has been suspended, TxDOT:

3.4.1.1 Concurrently suspends tolling on all other TxDOT-operated tolled facilities that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area;

3.4.1.2 Concurrently orders suspension of tolling on all other tolled facilities operated by others that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area and over which TxDOT has the authority to order such suspension; and

3.4.1.3 Lifts such order as soon as the need for Emergency evacuation or disaster response ceases.

3.4.2 TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling by any federal or State agency or instrumentality other than TxDOT to facilitate Emergency evacuation issued pursuant to applicable Law or to respond to a disaster proclaimed by the Governor of Texas or his/her designee.

3.4.3 In any time of a declared Emergency or natural disaster, as determined by the Executive Director, TxDOT shall have the right to order immediate suspension of tolling of the Managed Lanes or any portion of the Managed Lanes, as TxDOT deems appropriate. TxDOT shall have no liability to Developer for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect, except that TxDOT shall compensate Developer for the impact on Toll Revenues for the period that such order is in effect based on the average net Toll Revenues received during the comparable days and times over the shorter of (a) the previous six months or (b) the period commencing on the Service Commencement Date applicable to the affected Managed Lanes. Such compensation shall exclude Video Transaction Toll Premiums and shall be reduced by all avoided processing and collection fees, charges and costs, including Transaction fees and charges. In the event TxDOT has the right to suspend tolling under Sections 3.4.1 and 3.4.3, TxDOT may elect to suspend tolling under either Section 3.4.1 or 3.4.3.

3.5 Toll Revenues

3.5.1 Except as otherwise provided in this Agreement, at all times during the Term, Developer shall have the exclusive right, title, entitlement and interest in and to the Toll Revenues, subject to the terms and conditions of the FA Documents (including TxDOT's rights to compensation in accordance with this Agreement) and the security interests therein under the Security Documents. For the avoidance of doubt, except as otherwise provided in this Agreement, the foregoing shall include the exclusive right, title, entitlement and interest in and to all tolls and other charges permitted hereunder as they accrue with respect to Transactions occurring during the Term.

3.5.2 Developer may use Toll Revenues to make any Distribution or to pay non-competitive fees and charges of Affiliates, provided Developer first pays (a) all current and delinquent amounts due to TxDOT under this Agreement or the Lease, including any compensation due under Article 5, (b) all current and delinquent costs and expenses of O&M Work or of otherwise operating and maintaining the Facility (including premiums for insurance,

bonds and other performance security, and including Safety Compliance work and Handback Requirements work), (c) current and delinquent debt service, and other current and delinquent amounts, due under any Funding Agreement or Security Document, (d) all currently required or delinquent deposits to the Handback Requirements Reserve, (e) all Taxes currently due and payable or delinquent (except to the extent being contested in good faith and appropriate reserves have been established consistent with U.S. GAAP), and (f) all current and delinquent costs and expenses of Renewal Work (provided that nothing in this clause shall be construed as releasing TxDOT from any of its obligations under Section 25.7.2). If Developer makes any Distribution or makes any payment to an Affiliate in violation of this provision, the same shall be deemed to be held in trust by the recipient for the benefit of TxDOT and the Collateral Agent under the senior Security Documents, and shall be payable to TxDOT or the Collateral Agent on demand. If TxDOT collects any such amounts held in trust, it shall make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent net of any amounts under clause (a) above.

3.5.3 Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, specifically including all amounts due to TxDOT under Sections 5.1, 5.3 and 25.3.6.3, before they may be used and applied for any other purpose.

3.5.4 Developer shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Lease, the Facility, the Work, or Developer's services under this Agreement. The foregoing does not apply to or affect Developer's right to make Distributions in accordance with Developer's governing instruments and subject to the limitations in Section 3.5.2. For the avoidance of doubt, Developer shall have the right to use Toll Revenues to service debt required for the Facility.

3.5.5 Developer acknowledges and agrees that it shall not be entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the Lease other than those resulting from cost savings, Toll Revenues, those items of income identified in the exclusions from the definition of Toll Revenues, Compensation Amounts and Termination Compensation in accordance with the provisions of this Agreement, and earnings thereon. The Parties acknowledge that this Agreement and the Lease contain commercially reasonable provisions and allow Developer no more than a reasonable rate of return and compensation commensurate with risk.

3.5.6 Toll Revenues shall be deposited in the appropriate account under the Facility Trust Agreement established for the purposes of holding Toll Revenues.

ARTICLE 4. FINANCING; REFINANCING

4.1 Developer Right and Responsibility to Finance

4.1.1 Developer may grant security interests in or assign the entire Developer's Interest (but not less than the entire Developer's Interest) to Lenders for purposes of securing the Facility Debt, subject to the terms and conditions contained in this Agreement and the Lease. Developer is strictly prohibited from pledging or encumbering the Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to Developer, the Facility and Work, (c) a special purpose entity subsidiary owned by Developer or an entity described in clause (b) above, or (d) the PABs Issuer.

4.1.2 Subject to TxDOT's obligation to finance and pay for (a) the acquisition, design, permitting, development and construction of the TxDOT Works and the GP Capacity Improvements, (b) the acquisition of all Facility Right of Way required for the TxDOT Works and GP Capacity Improvements, (c) the acquisition of up to \$18 million of ROW parcels for the non-tolled portions of the Facility Extension portion of the Segment 3C Facility Segment, and (d) repairs required under Section 25.7.2, and except as set forth in Sections 7.4.7, 7.5.4.7 and 25.5 and Exhibit 7, Developer is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to TxDOT, necessary for the acquisition, design, permitting, development, construction, equipping, operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Facility and for the Utility Adjustment Work. Developer will pursue the necessary financing in accordance with the Facility Plan of Finance, portions of which are or upon Financial Close will be deposited in an Intellectual Property Escrow and the remaining portions of which are attached as Exhibit 5.

4.1.3 Developer warrants and represents:

4.1.3.1 As of Financial Close, that it has delivered to TxDOT or to an Intellectual Property Escrow true, correct and complete copies of the Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and that as of the Financial Close there existed no breach or default by Developer or any Affiliate thereunder or events which with notice or the passage of time, or both, would constitute a breach or default thereunder; and

4.1.3.2 As of Financial Close (3C), that it has delivered to TxDOT or to an Intellectual Property Escrow true, correct and complete copies of the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection therewith (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms) and that as of Financial Close (3C) there exists no breach or default by Developer or any Affiliate thereunder or events which with notice or the passage of time, or both, would constitute a breach or default thereunder.

4.1.4 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents, on or before the Effective Date, then the following provisions shall apply:

4.1.4.1 Unless Developer or TxDOT elects to terminate this Agreement pursuant to Section 4.1.4.4, 4.1.4.5 or 19.1.2.5, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Facility Debt (including any subordinated debt), in a total amount, which when combined with all unconditional equity commitments acceptable to the Collateral Agent and any Public Funds Amount, any positive Recalibration Adjustment Amount, and any other sources of funds available to Developer other than from TxDOT or any other State entity, is sufficient to fund all capital requirements described in Exhibit 5 (including any negative Recalibration Adjustment Amount and the Developer Closing Payment), by not later than the Facility Financing Deadline, which may only be extended in accordance with this Section 4.1.4.1.

(a) Developer shall have the option to extend the Facility Financing Deadline under this Agreement for an additional 450 days by delivering to TxDOT not less than ten days prior to the initial Facility Financing Deadline (i) written notification of the extension and (ii) increased Financial Option Security in the total amount of \$100 million, meeting the

requirements of Section 16.3.1. If Developer does not timely exercise this option, it will expire, and Developer shall be obligated to achieve Financial Close by the initial Facility Financing Deadline.

(b) The Facility Financing Deadline will not be extended on account of any Relief Event (notwithstanding any other provision of this Agreement to the contrary), except that such deadline may be extended by the period of delay in Developer's ability to achieve Financial Close directly caused by TxDOT-Caused Delay, TxDOT Change or Discriminatory Action.

4.1.4.2 Except to the extent expressly permitted in writing by TxDOT, Developer shall not be deemed to have achieved Financial Close until all of the following conditions have been satisfied:

(a) Developer has prepared the Base Case Financial Model Update as contemplated and required by Section 5.2.1 in accordance with the terms hereof, including the calculation of any Refinancing Gain;

(b) Developer has delivered to TxDOT, or made available to TxDOT via an Intellectual Property Escrow, for review and comment under Section 6.3.7.1, except clause (b) thereof, drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Facility Debt as and when such drafts become available but not later than ten days prior to the proposed date for Financial Close with final versions of such documents to be delivered no later than one day prior to the proposed date for Financial Close;

(c) Developer has delivered to TxDOT true and complete executed copies of the direct lender agreement under Section 20.9.4, if any;

(d) All applicable parties have entered into and delivered the Initial Funding Agreements and Initial Security Documents (except to the extent that such documents are not required to be executed on such date) meeting the requirements of Section 4.1.4.1 and Developer has delivered to TxDOT or to an Intellectual Property Escrow true and complete copies of the executed Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms); and

(e) Developer has provided TxDOT with written notice of Developer's satisfaction of all the conditions of this Section 4.1.4.2.

4.1.4.3 If for any reason Developer fails to achieve Financial Close by the Facility Financing Deadline, then TxDOT shall have the liquidated damage and termination remedies set forth in Sections 17.4.4 and 19.3.4, after delivering written notice of such Developer Default to Developer and Developer's failure to cure the same within the cure period set forth in Section 17.1.2.1; provided, however, that Developer shall not be deemed to be in Developer Default and TxDOT will not be entitled to such liquidated damage remedies (but nevertheless shall be entitled to terminate this Agreement in accordance with the terms hereof) if such failure is directly attributable to:

(a) A drop in the State's credit rating below A+ from Standard & Poor's and A2 from Moody's;

(b) If PABs are part of the initial financing under Developer's Facility Plan of Finance, any delay by or refusal of the PABs Issuer to issue bonds in the amount that Developer's underwriters are prepared to underwrite, provided that such refusal or delay is not due to any fault or less than diligent efforts of Developer, including Developer's failure to satisfy all requirements that it is obligated to satisfy under the Original PABs Agreement. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds, failure of the PABs Issuer to meet that schedule shall not be considered a delay;

(c) If PABs are part of the initial financing under Developer's Facility Plan of Finance, (i) the refusal of the PABs Issuer's counsel to authorize closing of the PABs where the bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion or (ii) the delay of the PABs Issuer's counsel in authorizing closing of the PABs. If the Developer's financing schedule does not include normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds, failure of the PABs Issuer's counsel to meet that schedule shall not be considered a delay;

(d) If PABs are part of the initial financing under Developer's Facility Plan of Finance, (i) the failure of the PABs Issuer or TxDOT to comply with the terms of the Original PABs Agreement or (ii) the failure of the USDOT to provide an allocation with respect to the PABs or the withdrawal, rescission or revocation of such allocation by the USDOT Secretary in the amount approved by the USDOT Secretary where such failure directly causes inability to achieve Financial Close by the deadline therefor;

(e) If TIFIA credit assistance is part of the initial financing as determined pursuant to Section 4.1.4.5(a), the failure of the TIFIA Joint Program Office to close financing or provide financing on or prior to the Facility Financing Deadline despite commercially reasonable efforts by Developer to do so (including making reasonable financial and commercial concessions as necessary and appropriate under the circumstances) on the terms contemplated in the Facility Plan of Finance set forth in Section 4.1.4.5(g) and included in the Base Case Financial Model referred to in Section 4.1.4.5(h); or

(f) The issuance of a temporary restraining order or other form of injunction by a court with jurisdiction that prohibits prosecution of any portion of the Work that remains pending on the Facility Financing Deadline.

4.1.4.4 Developer or TxDOT may terminate this Agreement if Financial Close does not occur by the Facility Financing Deadline and such failure is directly attributable to any of the contingencies set forth in Section 4.1.4.3; provided, that if Financial Close is not achieved by the Facility Financing Deadline solely as a result of one or more of the reasons set forth in clauses (b), (c) or (d)(i) of Section 4.1.4.3, the Facility Financing Deadline and the market interest rate protection period specified in Section 4.1.4.6 shall each be extended on a day for day basis, plus an additional 30 days up to a maximum of 90 days in total to account for the consequences of such failure and the impact thereof on Financial Close; provided that Developer commensurately extends the expiry date of the Financial Option Security.

(a) In the event either Party terminates this Agreement due to the circumstances set forth in clause (a), (d)(ii), (e), or (f) of Section 4.1.4.3, the provisions of Section 19.1.2.10 will apply;

(b) In the event either Party terminates this Agreement due to the circumstances set forth clause (b), (c) or (d)(i) of Section 4.1.4.3, the provisions of Section 19.1.2.11 will apply.

4.1.4.5 The schedule, terms and procedures for determining the initial financing for the Facility and any related recalibration are as follows:

(a) The Parties acknowledge that (i) the TIFIA Joint Program Office has authorized and invited an application for TIFIA credit assistance for the Facility in the amount of up to \$537 million, and (ii) Developer intends to develop and provide TxDOT with an alternative Facility Plan of Finance for the Facility. If (1) Developer fails to submit an alternative Facility Plan of Finance to TxDOT within 60 days after the Effective Date (or such other time period as mutually agreed) or (2) TxDOT notifies Developer of its rejection of the alternative Facility Plan of Finance within 20 Business Days (or such longer period as agreed to by the Parties) from receipt of the alternative Facility Plan of Finance, this Agreement will terminate in accordance with Section 19.1.2.1 or 19.1.2.2, as applicable.

(b) If Developer timely submits a proposed alternative Facility Plan of Finance described in clause (a)(ii) above and TxDOT notifies Developer that it agrees to Developer's proposed alternative Facility Plan of Finance, Developer shall deliver the following to TxDOT no later than March 31, 2013:

(i) Written notice of the proposed Recalibration Date, which date must be no earlier than the later to occur of (A) the date that is 60 days (or such shorter period as agreed to by the Parties) after the delivery of the information set forth in clauses (ii)-(v) below and (B) January 31, 2013 (or any such shorter period as agreed to by the Parties));

(ii) No later than concurrently with delivery of the written notice of the Recalibration Date, increased Financial Option Security in the total amount of \$75 million, meeting the requirements of Section 16.3.1;

(iii) The identification of Developer's proposed types of Benchmark Rates;

(iv) Reasonable estimates of the impacts positive or negative, to the Project Cash Flows directly attributable to (A) each Pre-Recalibration Third Party Compensation Event (if any), and (B) for informational purposes only, each Compensation Event that is not a Pre-Recalibration Third Party Compensation Event that, in each of clauses (A) and (B) has occurred by a date that is at least ten Business Days prior to the date on which the notice in clause (i) above is provided and for which a Compensation Amount has not been determined (if any). To the extent that such items and/or events do not directly impact Project Cash Flows, Developer shall not be required to provide to TxDOT such estimates; and the lack of such estimates shall be conclusively presumed to mean that there are no adverse impacts to the Project Cash Flows directly attributable to such items;

(v) Reasonable estimates of the Compensation Amounts attributable to any Pre-Recalibration Third Party Compensation Events and/or other Compensation Events; and

(vi) All the information reasonably necessary to determine the reasonableness of the estimates required pursuant to clauses (iv) and (v) above.

(c) If Developer fails to provide to TxDOT the written notice of its proposed Recalibration Date or any of the other information and materials required pursuant to clause (b) above within the deadline established in such clause (except as provided otherwise in clause (b)(iii) above) (with any disagreement regarding the same being subject to the Dispute Resolution Procedures), this Agreement will terminate in accordance with Section 19.1.2.3. TxDOT will notify Developer within 60 days (or such shorter period as agreed to by the Parties) after receipt of the information required pursuant to clauses (b)(i)-(v) above whether (i) TxDOT, in its sole discretion, determines that, based on the information provided by Developer pursuant to clauses (b)(iii)-(v) above, the impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events are or are not acceptable and (ii) if applicable, whether the proposed types of Benchmark Rates do not satisfy the requirements described in clauses (a) and (b) of the definition of Benchmark Rates. In making its determination pursuant to clause (i) above and subject, for the avoidance of any doubt, to clause (d) below, TxDOT may develop its own analyses of Project Cash Flow impacts, including analyses indicating positive impacts on Project Cash Flows.

(d) If TxDOT notifies Developer pursuant to clause (c)(i) above that the impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events are not acceptable, this Agreement shall terminate as set forth in Section 19.1.2.6.

(e) If TxDOT notifies Developer pursuant to clause (c)(ii) above that Developer's submission of its proposed types of Benchmark Rates do not satisfy the requirements described in clauses (a) and (b) in the definition of Benchmark Rates (and Developer shall have failed to so satisfy such requirements), then the Parties will attempt to resolve in good faith any outstanding issues for a period not to exceed 14 days (or such other time period as may be mutually agreed). If no resolution of these issues is achieved within such time period, then the provisions of Sections 4.1.4.6(b) and (c) will not apply and there will be no change to the Developer Closing Payment pursuant to such Sections. Any disagreement regarding whether Developer satisfied the requirements of clauses (a) and (b) in the definition of Benchmark Rates will be subject to the Dispute Resolution Procedures.

(f) TxDOT also shall have the right at any time on or prior to the proposed Recalibration Date to review any outstanding or resolved lawsuits challenging the NEPA Approvals. If there are one or more such challenges, TxDOT has the right, on or prior to Developer's proposed Recalibration Date, to terminate this Agreement in its sole discretion, as set forth in Section 19.1.2.6. If there are such lawsuits and TxDOT has determined that it will exercise its right to terminate this Agreement, TxDOT will provide notice of the same to Developer prior to Developer's proposed Recalibration Date.

(g) Unless this Agreement shall have been terminated prior to the proposed Recalibration Date in accordance with the terms hereof, on the proposed Recalibration Date Developer shall provide to TxDOT:

(i) An updated Base Case Financial Model that reflects, to the extent applicable, (A) the accepted impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events that were included in the notice of proposed Recalibration Date described above, (B) the reasonable estimates of the impacts to the Project Cash Flows attributable to any Pre-Recalibration Third Party Compensation Events that have occurred between the date that is ten Business Days prior to the date of the notice of proposed Recalibration Date and the date that is ten Business Days prior to the proposed Recalibration

Date, (C) Developer's then-current plan for financing the Facility (such plan becoming the Facility Plan of Finance) with no other changes made to any other model inputs, and (D) an updated Recalibration Adjustment Amount at the magnitude necessary to reset the Equity IRR back to the value established in the Base Case Financial Model as of the Effective Date. For the purposes of calculating the Recalibration Adjustment Amount, the Parties shall assume that such amount is paid at the anticipated date of Financial Close as reflected in the model. Developer shall submit to TxDOT the updated model together with an update of the audit and opinion pursuant to Section 5.2.4. Developer shall also submit the information reasonably necessary to determine the reasonableness of the estimates required pursuant to clause (B) above.

(ii) In the event that such updated Base Case Financial Model demonstrates a Recalibration Adjustment Amount that is positive, as contemplated in clause (h)(iii) below, an updated Base Case Financial Model reflecting the same impacts, except for any impacts related to any Pre-Recalibration Third Party Compensation Events (the "Alternate Financial Model"), which Alternate Financial Model shall only be used for the express purpose contemplated in clause (h)(iii) below. The Recalibration Adjustment Amount calculated in the Alternate Financial Model as set forth in the immediately preceding sentence shall be the "AFM Recalibration Adjustment Amount."

(iii) New or updated estimates of each Compensation Event that is not a Pre-Recalibration Third Party Compensation Event for which no Compensation Amount has been determined or provide confirmation that the previous estimate still reflects Developer's best estimate of the Compensation Amount for such Compensation Event.

(h) Within five Business Days after TxDOT's receipt of the updated Base Case Financial Model, as well as the Alternative Financial Model, if any, submitted by Developer pursuant to clause (g) above, TxDOT will review such model(s) and notify Developer whether such model(s) are free from errors or that it has otherwise identified any errors in one or both of the models. In the event that TxDOT shall have identified any such errors, Developer shall immediately correct such errors. After any such errors have been corrected or if there are no such errors, the following provisions shall apply.

(i) If the Recalibration Adjustment Amount generated by the model is negative (requiring an additional payment from Developer to TxDOT), then the Recalibration Date shall be the first Business Day after the date of TxDOT's notice provided in accordance with the first sentence of this clause (h) or, to the extent that any errors had been identified as per the terms above, the first Business Day after all such errors have been corrected. The Parties will record as of the Recalibration Date the values of the Benchmark Rates as set forth in Section 4.1.4.6(c) and, at the election of Developer, Developer shall pay the Recalibration Adjustment Amount either (A) at Financial Close or (B) in accordance with a payment schedule agreed to by the Parties spreading payments of the Recalibration Adjustment Amount over a period not to exceed ten years. For purposes of the calculation contemplated hereunder, such payment schedule shall commence on Developer's anticipated date of Financial Close (unless otherwise agreed to by the Parties) as reflected in the model and shall be determined such that the Net Present Value of the payments as of the anticipated date of Financial Close equals the Recalibration Adjustment Amount; provided that such amount is deemed in the model to have been paid at the anticipated date of Financial Close. For the purposes of this clause (i), "Net Present Value" means the aggregate of the discounted values, calculated as of the anticipated date of Financial Close, of each of the relevant payments, in each case discounted using the Equity IRR established in the Base Case

Financial Model as of the Effective Date. The model will be updated to incorporate any agreed payment schedule under this subsection and under Section 4.1.4.7 and will then become the Base Case Financial Model and Developer shall have no further right to compensation from TxDOT with respect to the Pre-Recalibration Third Party Compensation Events included in such model. Developer agrees to pay TxDOT such amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of the exclusive right to toll the Managed Lanes and rent for Facility Right of Way and Developer allocates such amount for U.S. federal income tax purposes between the exclusive right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Effective Date, which Developer has determined are 89.82 percent and 10.18 percent respectively.

(ii) If the Recalibration Adjustment Amount is positive (requiring a payment from TxDOT to Developer), then Developer shall notify TxDOT within three Business Days from receipt of TxDOT's notice provided in accordance with the first sentence of this clause (h) or, to the extent that any errors had been identified as per the terms above, the first Business Day after all such errors have been corrected, whether it will proceed with the Facility with a Recalibration Adjustment Amount of \$0. If Developer is willing to proceed with the Facility with a Recalibration Adjustment Amount of \$0, then (A) Developer will update the Base Case Financial Model to reset the Recalibration Adjustment Amount to \$0 and establish the corresponding reduction in Developer's Equity IRR, (B) the Parties will record the values of the Benchmark Rates as set forth in Section 4.1.4.6(c) and (C) the Recalibration Date shall be the first Business Day after the date of Developer's notification and the model, as updated, will become the Base Case Financial Model and Developer shall have no further right to compensation from TxDOT with respect to the Pre-Recalibration Third Party Compensation Events included in such model.

(iii) If the Recalibration Adjustment Amount is positive (requiring payment from TxDOT to Developer) and Developer does not provide the notice under clause (h)(ii) above or provides notice to TxDOT that it will not proceed with the Facility with a Recalibration Adjustment Amount of \$0, TxDOT may terminate this Agreement as set forth in (A) Section 19.1.2.5 if the AFM Recalibration Adjustment Amount is positive or (B) Section 19.1.2.6 if the AFM Recalibration Adjustment Amount is equal to \$0 or is negative, in each case, within three Business Days from the expiration of the period for Developer's notice under clause (h)(ii) above. If, within such three Business Day period, TxDOT notifies Developer that it will proceed with the Facility on the basis of the originally calculated positive Recalibration Adjustment Amount calculated pursuant to clause (g)(i)(D) above as potentially updated to correct errors identified pursuant to clause (h) above, then (1) the Parties will record the values of the Benchmark Rates as set forth in Section 4.1.4.6(c), (2) the Recalibration Date shall be the first Business Day after the date of TxDOT's notification and the model, as and if updated, will become the Base Case Financial Model and (3) subject to payment by TxDOT to Developer of the Recalibration Adjustment Amount as provided herein, Developer shall have no further right to compensation from TxDOT with respect to the Pre-Recalibration Third Party Compensation Events included in such model. In such case, if the AFM Recalibration Adjustment Amount is positive, TxDOT shall pay to Developer the AFM Recalibration Adjustment Amount on the date of Financial Close or such other date as the Parties mutually agree. TxDOT shall pay the balance of the Recalibration Adjustment Amount in a lump sum payable on the date of Substantial Completion of the Segment 3A Facility Segment (together with interest thereon from the date of Financial Close to the date of Substantial Completion of the Segment 3A Facility Segment at a rate equal to LIBOR in effect from time to time plus 200 basis points). If TxDOT fails to provide notice pursuant to this clause (iii) within such three Business Day period, then (l) if the AFM Recalibration Adjustment

Amount is positive, this Agreement shall be deemed terminated and the provisions of Section 19.1.2.5 shall apply or (II) if the AFM Recalibration Adjustment Amount is equal to \$0 or is negative, this Agreement shall be deemed terminated and the provisions of Section 19.1.2.6 shall apply.

(i) TxDOT shall have the right to terminate this Agreement prior to the Recalibration Date for any reason other than those set forth in Section 4.1.4.3, 4.1.4.4 or 4.1.4.5(a) through (h) as set forth in Section 19.1.2.7.

4.1.4.6 Scheduling of Financial Close and adjustment for changes in Benchmark Rates are subject to the following terms and conditions:

(a) After Developer has updated the Base Case Financial Model pursuant to Section 4.1.4.5, Developer shall provide written notice to TxDOT of the scheduled date for Financial Close, which date must be no earlier than five Business Days after the date the notice is provided. In addition, to the extent that PABs or any other debt securities will be issued in the capital markets, the notice must also set forth the date scheduled for the pricing of the PABs or any such other debt securities and such notice must be provided at least 15 Business Days before the date scheduled for the pricing of the PABs or such other debt securities. If the scheduled date(s) change after Developer has provided to TxDOT the written notice contemplated in this Section 4.1.4.6, Developer shall promptly provide TxDOT with written notice of the new date(s), which cannot be any earlier than the date(s) set forth in the original notice.

(b) On the earlier of the date that is one Business Day prior to (i) the scheduled date for the pricing of the PABs or such other debt securities indicated in the written notice from Developer, or if no PABs or other debt securities will be issued, the date scheduled for Financial Close, and (ii) the date that is 91 days after the Recalibration Date (the "Calculation Date"), Developer and TxDOT shall determine on the basis of the Base Case Financial Model the amount of adjustment, positive or negative, necessary to hold constant the Developer's Equity IRR established at the Recalibration Date, calculated as provided in clause (c) below. Such an adjustment resulting in a positive amount shall constitute the "Developer Closing Payment." Such an adjustment in a negative amount shall constitute the "Public Funds Amount"; provided that the Public Funds Amount shall always be equal to at least \$24.2 million, as adjusted upward to give effect to increases in market interest rates as described in clause (c) below. Once Developer has delivered the notice described in clause (a) above, the market interest rate protection period and Calculation Date shall not be extended on account of any delays in the scheduled date of Financial Close except as set forth in Section 4.1.4.4 and except as set forth in clause (a) above. Any adjustment to the Developer Closing Payment shall be subject to Section 19.1.2.8.

(c) The adjustment under clause (b) above shall be calculated by taking into account changes in market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on the Recalibration Date and ending at 10:00 a.m. on the Calculation Date (but not considering any terms and conditions included in the Initial Funding Agreements and Initial Security Documents, if any). The interest rate adjustment will be based on the movement, if any, in the approved Benchmark Rates. Based on a reading taken from the relevant screen shots on the Calculation Date, Developer and TxDOT shall both adjust the Base Case Financial Model as of such date to reflect the changes (if any) in the relevant Benchmark Rates and any revisions approved by the Parties but not any potential errors identified as part of the updated audit and opinion provided pursuant to Section 5.2.4. TxDOT

and Developer will use the Base Case Financial Model, as so adjusted, to calculate the Developer Closing Payment or the Public Funds Amount, as applicable, as of the date of Financial Close due to the market interest rate protection by resetting Developer's Equity IRR back to the value established at the Recalibration Date. The Developer Closing Payment, if any, shall constitute compensation to TxDOT in exchange for TxDOT's grant to Developer of the right to toll the Managed Lanes and rent for the Facility Right of Way; and Developer allocates such amount for U.S. federal income and tax purposes between the right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Effective Date, which Developer has determined are 89.82 percent and 10.18 percent respectively.

4.1.4.7 If the adjustment under Section 4.1.4.6 results in a Developer Closing Payment, at the election of Developer, Developer shall pay to TxDOT the Developer Closing Payment either (a) concurrently with Financial Close or (b) in accordance with a payment schedule agreed to by the Parties spreading payments of the Developer Closing Payment over a period not to exceed ten years. For purposes of the calculation contemplated hereunder, such payment schedule shall commence on the anticipated date of Financial Close (unless otherwise agreed to by the Parties) as reflected in the Base Case Financial Model and shall be determined such that the Net Present Value of the payments as of the anticipated date of Financial Close equals the Developer Closing Payment; provided that such amount is deemed in the model to have been paid at the anticipated date of Financial Close. For the purposes of this Section, "Net Present Value" means the aggregate of the discounted values, calculated as of the anticipated date of Financial Close, of each of the relevant payments, in each case discounted using the Equity IRR established in the Base Case Financial Model as of the Effective Date. The model will be updated to incorporate any agreed payment schedule under this Section and under Section 4.1.4.5(h)(i) and will then become the Base Case Financial Model. Developer agrees to pay TxDOT such amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of the exclusive right to toll the Managed Lanes and rent for the Facility Right of Way and Developer allocates such amount for U.S. federal income tax purposes between the exclusive right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Effective Date, which Developer has determined are 89.82 percent and 10.18 percent respectively.

4.1.4.8 If this Agreement is not terminated pursuant to Section 19.1.2.8 (if applicable) because TxDOT has not elected to terminate, then TxDOT shall owe the Public Funds Amount to Developer in accordance with Part C of Exhibit 7. If this Agreement is not terminated pursuant to Section 19.1.2.8 (if applicable) because Developer has elected to override TxDOT's election to terminate as provided in Section 19.1.2.9, then no Developer Closing Payment shall be due TxDOT and no Public Funds Amount shall be due Developer. If the adjustment under Section 4.1.4.6 results in a Developer Closing Payment in excess of \$45 million and this Agreement is not terminated pursuant to Section 19.1.2.8 (if applicable) because TxDOT has elected to override Developer's election to terminate as provided in Section 19.1.2.9, then the amount of the Developer Closing Payment in excess of \$45 million shall not be due to TxDOT and the Developer Closing Payment shall be \$45 million.

4.1.4.9 The Parties shall complete Part A of Exhibit 6 at Financial Close.

4.1.4.10 The Parties shall revise the information contained in Attachment 1 to Exhibit 7 at the Recalibration Date using the Base Case Financial Model to calculate, by applying a constant coefficient to forecast revenues and holding all other variables constant except for dividends, the revenues necessary to yield the following range of blended, Post-Tax

IRRs earned by the equity invested in the Facility over the Term: 0%, 15.0%, 18.0%, 21.0% and 23.0%. The resultant revenue projections shall be inserted in the relevant columns of Attachment 1 to Exhibit 7.

4.1.5 Within two Business Days after the date of Financial Close, TxDOT shall return to Developer the original of the Financial Option Security. Within two Business Days after the date of Financial Close (3C), TxDOT shall return to Developer the original of the closing security required under the Change Order Agreement for the Segment 3C Facility Segment.

4.1.6 Developer shall deliver copies of any ancillary supporting documents (e.g., UCC filing statements) to TxDOT within 30 days after the date of Financial Close with respect to the Initial Facility Debt and within 30 days after the date of Financial Close (3C) with respect to the Segment 3C Initial Facility Debt.

4.1.7 Except as set forth in Section 4.1.4.6, Developer exclusively bears the risk of any changes in the interest rate, payment provisions or other terms of its financing.

4.1.8 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to TxDOT for the payment of all sums owing to TxDOT under this Agreement and the Lease and the performance and observance of all of Developer's covenants and obligations under this Agreement and the Lease.

4.2 No TxDOT Liability

4.2.1 TxDOT shall have no obligation to pay or fund debt service on any debt issued or incurred in connection with the Facility or this Agreement. TxDOT shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the Facility or this Agreement, any other Funding Agreement or any Security Document.

4.2.2 None of the State, TxDOT (except as otherwise set forth in Section 4.2.4), the Texas Transportation Commission or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, has any liability whatsoever for payment of the principal sum of any Facility Debt, any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility, or any interest accrued thereon or any other sum secured by or accruing under any Funding Agreement or Security Document. Except for a violation by TxDOT of its express obligations to Lenders set forth in Article 20 and except as set forth in Section 3.5.2, no Lender is entitled to seek any damages or other amounts from TxDOT, whether for Facility Debt or any other amount. TxDOT's review of any Funding Agreements or Security Documents or other Facility financing documents is not a guarantee or endorsement of the Facility Debt, any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility, or any traffic and revenue study, and is not a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to the Facility Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Facility, or as to the adequacy of the Toll Revenues to provide for payment of the Facility Debt or any other obligations issued or incurred by such Person in connection with this Agreement, the Lease or the Facility. For the avoidance of doubt, the foregoing does not affect TxDOT's liability to Developer under Article 19 and Exhibit 20 for Termination Compensation that is measured in whole or in part by outstanding Facility Debt.

4.2.3 TxDOT shall not have any obligation to any Lender pursuant to this Agreement, except, if the Collateral Agent has notified TxDOT of the existence of its Security Documents, for the express obligations to Lenders set forth in Article 20 and Section 3.5.2 or in any direct lender agreement pursuant to Section 20.9.4. The foregoing does not preclude Lender enforcement of this Agreement against TxDOT where the Lender has succeeded to the rights, title and interests of Developer under the FA Documents, whether by way of assignment or subrogation.

4.2.4 For the avoidance of doubt and notwithstanding anything to the contrary set forth in this Agreement or any other FA Document, TxDOT shall be obligated to pay for the acquisition, design, permitting, development and construction of the TxDOT Works and any repairs required pursuant to Section 25.7.2, and TxDOT shall not be permitted to create any lien or security interest over, or otherwise encumber, any of the TxDOT Works or any repairs in respect thereto.

4.3 Mandatory Terms of Facility Debt, Funding Agreements and Security Documents

Facility Debt, Funding Agreements and Security Documents and any amendments or supplements thereto, shall comply with the following terms and conditions.

4.3.1 The Security Documents may only secure Facility Debt the proceeds of which are obligated to be used exclusively for the purposes of (a) performing Developer's obligations under the FA Documents in connection with acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Facility (other than in respect of the design and construction of the TxDOT Works), performing the Utility Adjustment Work required to be performed by Developer or the Renewal Work, or performing other Work, (b) paying interest on such Facility Debt and principal and interest on other existing Facility Debt, (c) paying reasonable development fees to Developer-Related Entities or to any Design-Build Contractor or its affiliates for services related to the Facility, (d) paying fees and premiums to any Lender of the Facility Debt or such Lender's agents, (e) paying costs and fees in connection with the closing of any permitted Facility Debt, (f) making payments due under the FA Documents to TxDOT or any other Person, (g) funding reserves required under this Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws, (h) making Distributions, but only from the proceeds of Refinancings permitted under this Agreement, and (i) refinancing any Facility Debt under clauses (a) through (h) above.

4.3.2 The Security Documents may only secure Facility Debt and Funding Agreements issued and executed by (a) Developer, (b) its permitted successors and assigns, (c) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Facility and the Work, (d) any special purpose subsidiary wholly owned by Developer or such entity, or (e) the PABs Issuer.

4.3.3 Facility Debt under a Funding Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Facility Debt in connection with the securitization or syndication of Facility Debt through a public or private offering, but only if an Institutional Lender acts as Collateral Agent for such Facility Debt, (b) PABs may be issued,

acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs and (c) Subordinate Debt is not subject to this provision.

4.3.4 The Security Documents as a whole securing each separate issuance of debt shall encumber the entire Developer's Interest, provided that the foregoing does not preclude subordinate Security Documents or equipment lease financing.

4.3.5 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of TxDOT in the Facility or the Facility Right of Way or TxDOT's rights or interests under the FA Documents.

4.3.6 Each note, bond or other negotiable or non-negotiable instrument evidencing Facility Debt, or evidencing any other obligations issued or incurred by any Person described in Section 4.3.2 in connection with this Agreement, the Lease or the Facility must include or refer to a document controlling or relating to the foregoing that includes a conspicuous recital to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Developer or the obligor therefor, is not an obligation, moral or otherwise, of the State, TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power of the State, TxDOT, the Texas Transportation Commission or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

4.3.7 Each Funding Agreement and Security Document containing provisions regarding default by Developer shall require, or incorporate a requirement by reference to another Funding Agreement or Security Document that requires, that if Developer is in default thereunder and the Collateral Agent gives notice of such default to Developer, then the Collateral Agent shall also give concurrent notice of such default to TxDOT. Each Funding Agreement and Security Document that provides Lender remedies for default by Developer or the borrower shall require that the Collateral Agent deliver to TxDOT, concurrently with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

4.3.8 No Funding Agreement or Security Document that may be in effect during any part of the period that the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Facility Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 8.11.3, and any provision purporting to grant such right shall be null and void, provided, however, that (a) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Developer in and to the Handback Requirements Reserve, and (b) an exception may be made for excess funds described in Section 8.11.4.2.

4.3.9 Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly permit, without condition or qualification, or incorporate permission by reference to another Funding Agreement or Security Document that expressly permits, without condition or qualification, Developer to (a) use and apply funds in the Handback Requirements Reserve in the manner

contemplated by the FA Documents and (b) issue additional Facility Debt, secured by the Developer's Interest, for the added limited purposes of funding work pursuant to Handback Requirements and Safety Compliance as set forth in Section 12.4 and (c) otherwise comply with its obligations in the FA Documents regarding Renewal Work, the Renewal Work Schedule, the Handback Requirements and the Handback Requirements Reserve. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the Handback Requirements Reserve set forth in any Funding Agreement or Security Document or the issuance of additional Facility Debt as described in clause (b) above shall be consistent with the permitted uses of the Handback Requirements Reserve, and shall not constrain Developer's or TxDOT's access thereto for such permitted uses, even during the pendency of a default under the Funding Agreement or Security Document. For the avoidance of doubt, (i) the Lenders then holding Facility Debt may reasonably limit additional Facility Debt if other funds are then readily available to Developer for the purpose of funding the Work; (ii) no Lender then holding Facility Debt is required hereby to grant *pari passu* lien or payment status to any such additional Facility Debt; and (iii) the Lenders then holding Facility Debt may impose reasonable, customary requirements as to performance and supervision of the Work.

4.3.10 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not name or join TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Facility Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, unless and except to the extent that (a) joinder of TxDOT as a necessary party is required by applicable Law in order to confer jurisdiction on the court over the dispute with Developer or to enforce Lender remedies against Developer and (b) the complaint against TxDOT states no claim or cause of action for a lien or security interest on, or to foreclose against, TxDOT's right, title and interest in and to the Facility and Facility Right of Way, or for any liability of TxDOT on the indebtedness.

4.3.11 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not seek any damages or other amounts from TxDOT, the Texas Transportation Commission, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, whether for Facility Debt or any other amount, except (a) damages from TxDOT for a violation by TxDOT of its express obligations to Lenders set forth in Section 3.5.2 and Article 20 or in any direct lender agreement pursuant to Section 20.9.4 and (b) amounts due from TxDOT under this Agreement where the Lender has succeeded to the rights, title and interests of Developer under the FA Documents, whether by way of assignment or subrogation.

4.3.12 Each Funding Agreement and Security Document shall be consistent with Section 3.5.3.

4.3.13 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender and the Collateral Agent shall respond to any request from TxDOT or Developer for consent to a modification or amendment of this Agreement within a reasonable period of time.

4.3.14 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender agrees to exclusive jurisdiction and venue in the federal and State courts in Travis County in any action by or against TxDOT or its successors and assigns.

4.4 Refinancing

4.4.1 Right of Refinancing

Developer from time to time may consummate Refinancings under the Funding Agreements on terms and conditions acceptable to Developer. TxDOT shall have no obligations or liabilities in connection with any Refinancing except for the rights, benefits and protections set forth in Article 20 (but only if the Refinancing satisfies the conditions and limitations set forth in Section 20.1).

4.4.2 Notice of Refinancing

4.4.2.1 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall deliver, not later than 14 days prior to the proposed date for closing the Refinancing, either to TxDOT or to an Intellectual Property Escrow for access and review by TxDOT, the following:

(a) Draft proposed Funding Agreements and Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms); and

(b) The Pre-Refinancing Data.

4.4.2.2 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing, Developer shall deliver, not later than 30 days after close of the Refinancing (but in the case of the Segment 3C Initial Facility Debt, not later than the date of Financial Close (3C)), either to TxDOT or to an Intellectual Property Escrow for access and review by TxDOT the following.

(a) Copies of all signed Funding Agreements and Security Documents in connection with the Refinancing; and

(b) The Refinancing Data.

4.4.3 Refinancing Limitations, Requirements and Conditions

4.4.3.1 If TxDOT renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under Section 20.9 or any direct lender agreement pursuant to Section 20.9.4, then Developer shall reimburse TxDOT all TxDOT's Recoverable Costs and other fees, costs and expenses TxDOT incurs in connection with rendering any such assistance or performing any such activity. Developer also shall reimburse TxDOT's Recoverable Costs of assessing the Refinancing Gain and TxDOT's share thereof, if any. If TxDOT delivers to Developer a written invoice therefor at least two Business Days prior to the scheduled date of closing, then Developer shall reimburse such costs at closing. If TxDOT does not deliver a written invoice at least two Business Days prior to closing, then it may deliver such invoice within 30 days after

receiving notice of closing and Developer shall reimburse TxDOT for such costs within ten days after TxDOT delivered the invoice to Developer. If for any reason the Refinancing does not close, Developer shall reimburse such TxDOT's Recoverable Costs and such other fees, costs and expenses within ten days after TxDOT delivers to Developer a written invoice therefor.

4.4.3.2 The Refinancing Gain shall be calculated after deducting payment of such TxDOT's Recoverable Costs and such other fees and expenses, as well as Developer's reasonable professional costs and expenses directly associated with the Refinancing.

4.5 Financing of TxDOT Works and GP Capacity Improvements

Notwithstanding anything to the contrary in this Agreement or the other FA Documents, and subject to Section 4.2.4, TxDOT shall be solely responsible for obtaining and repaying any and all financing, at its own cost and risk and without recourse to any Developer-Related Entity, necessary for the acquisition, design, permitting, development and construction of the TxDOT Works, for the Utility Adjustment Work related to the TxDOT Works, for any repairs required pursuant to Section 25.7.2, and for the acquisition, design, permitting, development and construction of the GP Capacity Improvements as provided in Part F of Exhibit 7.

ARTICLE 5. TXDOT COMPENSATION; FINANCIAL MODEL UPDATES; PAYMENT OF PUBLIC FUNDS; APPROPRIATIONS

5.1 Revenue Payments

TxDOT's rights to payment related to Toll Revenues for the Facility are set forth in Part A of Exhibit 7. Developer agrees to pay TxDOT such amounts as compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Facility pursuant to the Lease. For federal income tax purposes, the Revenue Payment Amount is allocated as set forth in Part A of Exhibit 7.

5.2 Financial Model and Model Audit Updates

5.2.1 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update:

5.2.1.1 At the Recalibration Date and at Financial Close;

5.2.1.2 Whenever there occurs a Compensation Event;

5.2.1.3 Whenever there occurs a Refinancing with Refinancing Gain in which TxDOT participates;

5.2.1.4 Whenever the FA Documents are amended and the Parties agree that the amendment has a material effect on future costs or Toll Revenues;

5.2.1.5 Whenever a Relief Event extends the Term;

5.2.1.6 Whenever the GP Public Funds Amount is determined in accordance with Part F of Exhibit 7; and

5.2.1.7 Whenever there occurs a partial termination of this Agreement and the Lease pursuant to Section 19.12.1(d) or 19.14.

The Base Case Financial Model Update (3C) is an update pursuant to Section 5.2.1.4 and, if applicable, Section 5.2.1.3.

5.2.2 Each Base Case Financial Model Update shall modify inputs only to reflect the effect of the event that triggers the update. Base Case Financial Model Updates pursuant to Section 5.2.1.4 require the mutual written agreement of the Parties; and the Parties hereby mutually agree to the Base Case Financial Model Update (3C). Where the Base Case Financial Model Update is pursuant to Section 5.2.1.1, 5.2.1.2, 5.2.1.3, 5.2.1.5, 5.2.1.6 or 5.2.1.7, TxDOT shall have the right to challenge, according to the Dispute Resolution Procedures, whether such Base Case Financial Model Update or the related updated and revised assumptions and data conform to the requirements of this Agreement and is free of calculation errors. TxDOT shall have 90 days after receiving written notice from Developer that the Base Case Financial Model Update has been deposited in an Intellectual Property Escrow to commence action under the Dispute Resolution Procedures. In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged (or, if there has been no unchallenged Base Case Financial Model Update, the Base Case Financial Model) shall remain in effect pending the outcome of the challenge or until a new Base Case Financial Model Update is issued and unchallenged.

5.2.3 In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

5.2.4 At the Effective Date, at the time specified in Section 4.1.4.5(g), within two Business Days after the Recalibration Date and the Calculation Date, on the date of any Base Case Financial Model Update pursuant to Section 5.2.1.6, and within two Business Days after the date of Financial Close (3C) with respect to the Base Case Financial Model Update (3C), Developer shall deliver to TxDOT an audit and opinion or update thereof, as the case may be, obtained from the independent model auditor set forth in Exhibit 2. Each updated audit and opinion shall (a) be co-addressed to TxDOT, and (b) expressly identify TxDOT as an entity entitled to rely thereon. The updated audit and opinion to be delivered within two Business Days after the last date of any market interest rate protection period shall take into account only the adjustments identified in Section 4.1.4.6.

5.2.5 If a Base Case Financial Model Update occurs prior to the Base Case Financial Model adjustment under Section 4.1.4.6, then concurrently with such adjustment the then Base Case Financial Model shall be revised to incorporate the effect of such adjustment.

5.3 Refinancing Gain

5.3.1 TxDOT's rights to a portion of any Refinancing Gain are set forth in Part B of Exhibit 7. Developer agrees to pay TxDOT such amount as compensation to TxDOT in exchange for TxDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement and as rent for the use and operation of the Facility pursuant to the Lease. For federal income tax purposes, the payment to TxDOT of Refinancing Gain is allocated as set forth in Part B of Exhibit 7.

5.3.2 Except as otherwise provided in Section 4.2.2 of the Change Order Agreement, Refinancing Gain from the Segment 3C Initial Facility Debt, and TxDOT's share thereof, shall be calculated and applied in accordance with Section 4.9 of the Change Order Agreement, which shall supersede any inconsistent provisions in the definition of Refinancing Gain or in Part B of Exhibit 7 to this Agreement.

5.3.3 Payment of Public Funds

Developer's rights to receive payment of the Public Funds Amount [and the Segment 3C Public Funds Amount], as reimbursement pursuant to Section 2.2.2, are set forth in Part C and Part D of Exhibit 7. Developer's rights to receive payment of the GP Public Funds Amount (if any), as reimbursement pursuant to Section 2.2.2, are set forth in Part F of Exhibit 7. Developer's rights to receive payment to compensate for TxDOT's decision (if any) to require early Service Commencement for the 3C Ultimate Capacity Improvement are set forth in Part G of Exhibit 7.

5.4 Payment of HOV Discount

Developer's rights to receive payment of the HOV discount are set forth in Part H of Exhibit 7.

5.5 Interoperability Fee Adjustments

Adjustments associated with the Interoperability Fee are set forth in Part I of Exhibit 7.

5.6 TxDOT Monetary Obligations

All TxDOT monetary obligations under the FA Documents are subject to appropriation by the Texas Legislature; however, in the absence of such appropriation, such monetary obligations shall be payable solely from other unencumbered lawfully available funds of TxDOT (whether available at such time or in the future) that are not funds appropriated by the Texas Legislature. TxDOT shall submit a request in accordance with applicable Law to obtain an appropriation from the Texas Legislature, or shall perform actions permitted by Law to obtain, designate, or use any other lawfully available funds that are not funds appropriated by the Texas Legislature. This Section 5.7 applies to all monetary obligations of TxDOT set forth in the FA Documents, notwithstanding any contrary provisions of the FA Documents. The FA Documents do not create a debt under the Texas Constitution.

ARTICLE 6. FACILITY PLANNING AND APPROVALS; REVIEW AND OVERSIGHT; PUBLIC INFORMATION

6.1 Preliminary Planning and Engineering Activities; Site Conditions

6.1.1 Subject to Section 25.1.1 and Exhibit 16, Developer shall perform or cause to be performed all engineering activities appropriate for development of the Facility (except for the TxDOT Works) and the Utility Adjustments in accordance with the FA Documents and Good Industry Practice, including (a) technical studies and analyses; (b) geotechnical investigations; (c) right-of-way mapping, surveying and appraisals; (d) Utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys.

6.1.2 Except to the extent (a) Developer is entitled to relief under this Agreement for Relief Events, is entitled to compensation under clause (i) of the definition of Compensation Event or under Section 7.9.3, or is entitled to the Hazardous Material risk allocation terms of Exhibit 11, (b) TxDOT is required to serve as the generator and arranger of Pre-Existing Hazardous Materials under Section 7.9.5, and (c) set forth in Section 25.1.2, Developer shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site or the Existing Improvements and surrounding locations, and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Developer, TxDOT or any other Person. TxDOT makes no warranties or representations as to any surveys, data, reports or other information provided by TxDOT or other Persons concerning surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site, the Existing Improvements or surrounding locations. Developer acknowledges that such information is for Developer's reference only and has not been verified.

6.1.3 Except to the extent (a) Developer is entitled to relief under this Agreement for Relief Events, is entitled to compensation under clause (i) of the definition of Compensation Event or under Section 7.9.3, or is entitled to the Hazardous Material risk allocation terms of Exhibit 11, (b) TxDOT is required to serve as the generator and arranger of Pre-Existing Hazardous Materials under Section 7.9.5, and (c) set forth in Section 25.1.3, Developer shall bear the risk of all conditions occurring on, under or at the Site and the Existing Improvements, including (i) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (ii) changes in surface topography, (iii) variations in subsurface moisture content, (iv) Utility facilities, (v) the presence or discovery of Hazardous Materials, including contaminated groundwater, (vi) the discovery at, near or on the Facility Right of Way of any archeological, paleontological or cultural resources, and (vii) the discovery at, near or on the Facility Right of Way of any Threatened or Endangered Species.

6.2 Governmental Approvals and Third Party Agreements

6.2.1 As of the Effective Date, TxDOT has obtained certain of the TxDOT-Provided Approvals. As of the Amendment Effective Date, TxDOT has obtained certain of the TxDOT-Provided Approvals for the Segment 3C Facility Segment. TxDOT retains responsibility for processing all other TxDOT-Provided Approvals that it has not obtained as of the Effective Date. Subject to Section 25.2.1, Developer shall obtain (a) all other Governmental Approvals related to the performance of the Work, (b) except to the extent the FA Documents expressly provide TxDOT is responsible therefor, all third party approvals and agreements required in connection with the Facility, the Facility Right of Way or the Work, including those required in connection with a Compensation Event, and (c) any modifications, renewals and extensions of the TxDOT-Provided Approvals, including those required in connection with a Compensation Event. Developer shall deliver to TxDOT true and complete copies of all new or amended Governmental Approvals (other than the TxDOT-Provided Approvals) and third party approvals and agreements.

6.2.2 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Developer shall submit the same, together with any supporting environmental studies and analyses, to TxDOT (a) for approval or (b) for review and comment, as specified in the Technical Provisions.

6.2.3 Except to the extent Developer is entitled to relief under clause (k) or (p) in the definition of Compensation Event or clause (p) or (v) of the definition of Relief Event, in the event the Mandatory Scope Schematic differs from the Approved NEPA Schematics, as between TxDOT and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Facility location and design (excluding any TxDOT Works), including (a) conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the TxDOT-Provided Approvals, and other existing Governmental Approvals), and (c) bearing all risk and cost of litigation. Without limiting the foregoing, Developer shall be fully responsible for all necessary actions, including re-evaluation under NEPA and preparing the related necessary environmental studies and environmental documents, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of (i) the scope and design of the Segment 3C Facility Segment, including respecting the Westport Parkway managed lane braided ramps, SH 170 direct connectors and reconfigured IH 820/I-35W managed lane direct connectors, and (ii) any federal action to approve a private activity bonds allocation for the Segment 3C Facility Segment. Developer shall not undertake or permit to be undertaken design work for such direct connector ramps beyond preliminary design until all required NEPA re-evaluations are completed and approved by TxDOT. TxDOT and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771.

6.2.4 In the event Developer is unable to obtain necessary Governmental Approvals for any design that differs from the Approved NEPA Schematics, Developer shall be obligated to design and construct the Facility (other than the TxDOT Works) according to the design upon which the TxDOT-Provided Approvals were based, and no such circumstance shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

6.2.5 If Developer pursues Additional Properties outside the Facility Right of Way, or any other modification of or Deviation from any Governmental Approvals, including TxDOT-Provided Approvals, Developer shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between TxDOT and other Governmental Entities. These agreements include the following, as such agreements may be modified or revised:

6.2.5.1 Memorandum of Understanding between the Office of the Governor, Economic Development and Tourism Division and TxDOT, the Texas Parks and Wildlife Department, the Texas Commission on the Arts and the Texas Historical Commission (April 2004 – current, to promote tourism in Texas);

6.2.5.2 Memorandum of Agreement between TxDOT and Texas Parks and Wildlife Department (September 1, 2013);

6.2.5.3 Memorandum of Understanding between the Texas Department of Transportation and the General Land Office (June 15, 2004);

6.2.5.4 Memorandum of Understanding between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission (applicable to its successor agency the Texas Commission on Environmental Quality) (May 16, 2013);

6.2.5.5 First Amended Programmatic Agreement among the Federal Highway Administration, Texas State Historic Preservation Officer, Advisory Council on Historic Preservation and the Texas Department of Transportation Regarding the Implementation of Transportation Undertakings (December 28, 2005 and renewed in September 2010 and on December 7, 2015);

6.2.5.6 Memorandum of Understanding between the Texas Department of Transportation and the Texas Parks and Wildlife Department Regarding Mitigation Banking (December 7, 2005) (applicable only to Segment 3A Facility Segment);

6.2.5.7 Program Level Agreement for Biological Evaluations and for the Development of Further Endangered Species Act Programmatic Agreement among the Texas Department of Transportation, FHWA and U.S. Fish and Wildlife Service (August 26, 2005) (applicable only to Segment 3A Facility Segment);

6.2.5.8 Memorandum of Agreement between the Texas Department of Transportation and Texas Parks and Wildlife Department for Sharing and Maintaining Natural Diversity Database Information (April 11, 2007) (applicable only to Segment 3A Facility Segment);

6.2.5.9 Programmatic Agreement for the Review and Approval of NEPA Categorically Excluded Transportation Projects between the Federal Highway Administration and the Texas Department of Transportation, revised September 30, 2011; and

6.2.5.10 Memorandum of Understanding between the Federal Highway Administration and the Texas Department of Transportation concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327 (December 16, 2014).

Upon Developer's request, TxDOT will cooperate with Developer in updating the foregoing list and providing Developer with copies of the applicable agreements between TxDOT and other Governmental Entities. Developer shall periodically visit and monitor TxDOT's website for updates to the above documents.

6.2.6 At Developer's request, TxDOT shall reasonably assist and cooperate with Developer in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Developer under the FA Documents. TxDOT and Developer shall work jointly to establish a scope of work and budget for TxDOT's Recoverable Costs related to the assistance and cooperation TxDOT will provide. Subject to (a) any agreed scope of work and budget, (b) any rights of Developer in the case of a Compensation Event and (c) TxDOT's reimbursement obligations under Section B.8 or B.9 of Exhibit 20, if any, in the event of a termination of this Agreement prior to Financial Close, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, it incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies. Without limiting the foregoing, subject to any agreed scope of work and budget and to any rights of Developer in the case of a Compensation Event, Developer shall fully reimburse TxDOT for all costs and expenses, including TxDOT's Recoverable Costs, it incurs in carrying out the TxDOT actions. Notwithstanding anything to the contrary in this Section 6.2.6, Developer shall not reimburse TxDOT for costs and expenses related to any Governmental Approvals required to be obtained in connection with design and construction of the TxDOT Works.

6.2.7 Developer shall 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 FA Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to TxDOT in the FA Documents.

6.2.8 In the event that any Governmental Approvals required to be obtained by Developer must formally be issued in TxDOT's name, Developer shall undertake necessary efforts to obtain such approvals subject to TxDOT's reasonable cooperation with Developer, at Developer's expense (except in connection with a Compensation Event and subject to TxDOT's reimbursement obligations under Section B.8 or B.9 of Exhibit 20, if any, in the event of a termination of this Agreement prior to Financial Close), in accordance with Section 6.2.6, including execution and delivery of appropriate applications and other documentation in form approved by TxDOT. Refer to Section 4.2 of the Technical Provisions for more specific provisions on applications in TxDOT's name for Environmental Approvals.

6.2.9 In the event that TxDOT or FHWA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of Developer, Developer shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting necessary field investigations, surveys, and preparation of any required reports, documents and applications.

6.2.10 Developer shall be responsible for compliance with all applicable Laws in relation to Facility Specific Locations and for obtaining any Environmental Approval or other Governmental Approval required in connection with Facility Specific Locations.

6.2.11 Developer shall not enter into any agreement with any Governmental Entity, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Facility or Work or having any property interest affected by the Facility or the Work that in any way purports to obligate TxDOT, or states or implies that TxDOT has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless TxDOT otherwise approves in writing in its sole discretion. Developer has no power or authority to enter into any such agreement with a third party in the name or on behalf of TxDOT.

6.3 Submittal, Review and Approval Terms and Procedures

6.3.1 General

6.3.1.1 Wherever in the FA Documents Developer is obligated to make a Submittal to TxDOT, Developer shall also concurrently submit a duplicate thereof to the Independent Engineer. Wherever in the FA Documents Developer is obligated to make a submittal to the Independent Engineer, Developer shall also concurrently submit a duplicate thereof to TxDOT. The foregoing provision shall not apply wherever a provision of the FA Documents expressly states that no duplicate or copy is required to be submitted to TxDOT or the Independent Engineer.

6.3.1.2 This Section 6.3 sets forth uniform terms and procedures that shall govern all Submittals to TxDOT pursuant to the FA Documents or Facility Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the

provisions of this Section 6.3 and any other provisions of the FA Documents or Facility Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section 6.3 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 6.3.

6.3.2 Time Periods

6.3.2.1 Whenever TxDOT is entitled to review and comment on, or to affirmatively approve, a Submittal, TxDOT shall have a period of 14 days to act after the date it receives an accurate and complete Submittal, together with a completed transmittal form in form to be mutually agreed and all necessary information and documentation concerning the subject matter, except as otherwise provided below.

6.3.2.2 The time periods for the Independent Engineer to review and comment on a Submittal shall be as set forth in the Independent Engineer Joint Work Authorization, and except as specifically provided otherwise in the Independent Engineer Joint Work Authorization, shall be several days shorter than the time periods available to TxDOT, to enable TxDOT to take into consideration the comments and recommendations of the Independent Engineer before TxDOT delivers its own responses.

6.3.2.3 If any provision of the FA Documents expressly provides a longer or shorter period for TxDOT or the Independent Engineer to act, such period shall control over the foregoing time periods.

6.3.2.4 If at any given time TxDOT or the Independent Engineer is in receipt of more than (a) ten concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals mutually agreed in writing by TxDOT and Developer) that are subject to TxDOT's review and comment or approval or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the FA Documents, TxDOT may extend the applicable period for it and the Independent Engineer to act to that period in which TxDOT and the Independent Engineer can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the FA Documents, and no such extension shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim. However, if at any time TxDOT or the Independent Engineer is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether TxDOT may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to TxDOT under this Section 6.3.2 regarding such Submittals overlap. Whenever TxDOT is in receipt of excess concurrent Submittals, Developer may establish by written notice to TxDOT and the Independent Engineer an order of priority for processing such Submittals; and TxDOT and the Independent Engineer shall comply with such order of priority. Refer to Sections 6.5.1, 7.2.4 and 7.3.1 of the Technical Provisions for maximum concurrent Utility Submittals, Submittals of Acquisition Packages and Submittals of Facility ROW maps, and for extensions of time in the case of Utility Submittals, Acquisition Packages and Facility ROW maps in excess of the maximum.

6.3.2.5 All time periods for TxDOT or the Independent Engineer to act shall be extended by the period of any delay caused by any Relief Event set forth in clauses (a), (b), (c), (e), (n) and (o) of the definition of Relief Event (for this purpose modified where

applicable to refer to Developer acts rather than TxDOT) or caused by delay of any Developer-Related Entity.

6.3.2.6 During any time that TxDOT is entitled under Section 18.5 to increase the level of its and the Independent Engineer's auditing, monitoring, inspection, sampling, measuring, testing and oversight of the Facility, the Utility Adjustments and Developer's compliance with its obligations under this Agreement, the applicable period for TxDOT and the Independent Engineer to act on any Submittals received during such time and not related to curing the Developer Default(s) that instigated the Section 18.5 action shall automatically be extended by 14 days.

6.3.2.7 TxDOT shall endeavor to reasonably accommodate a written request from Developer for expedited action on a specific Submittal, within the practical limitations on availability of TxDOT and the Independent Engineer personnel appropriate for acting on the types of Submittal in question; provided Developer sets forth in its request specific, abnormal circumstances demonstrating the need for expedited action. This provision shall not apply, however, during any time described in Section 6.3.2.5 or 6.3.2.6.

6.3.3 TxDOT Discretionary Approvals

If the Submittal is one where the FA Documents indicate approval or consent or acceptance is required from TxDOT in its sole discretion, absolute discretion, unfettered discretion or good faith discretion, then TxDOT's lack of approval, determination, decision or other action within the applicable time period under Section 6.3.2 shall be deemed disapproval. If approval is subject to the sole, absolute or unfettered discretion of TxDOT, then its decision shall be final, binding and not subject to dispute resolution, and such decision shall not constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim. If the approval is subject to the good faith discretion of TxDOT, then its decision shall be binding unless it is finally determined by clear and convincing evidence that such decision was arbitrary or capricious. For avoidance of doubt, if the decision is determined to be arbitrary and capricious and causes delay, it will constitute and be treated as a TxDOT-Caused Delay.

6.3.4 Other TxDOT Approvals

6.3.4.1 Whenever the FA Documents indicate that a Submittal or other matter is subject to TxDOT's approval or consent and no particular standard therefor is stated, then the standard shall be reasonableness.

6.3.4.2 If the reasonableness standard applies to TxDOT's right of approval of or consent to a Submittal, and TxDOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 6.3.2, then Developer may deliver to TxDOT a written notice stating the date within which TxDOT was to have decided or acted and that if TxDOT does not decide or act within five Business Days after receipt of the notice, delay from and after lapse of the applicable time period under Section 6.3.2 may constitute TxDOT-Caused Delay for which Developer may be entitled to issue a Relief Event Notice and Compensation Event Notice under Sections 13.1 and 13.2.

6.3.5 TxDOT Review and Comment

Whenever the FA Documents indicate that a Submittal or other matter is subject to TxDOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval and TxDOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 6.3.2, then Developer may proceed thereafter at its election and risk, without prejudice to TxDOT's rights to later object or disapprove in accordance with Section 6.3.7.1. No such failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 6.3.2 shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim. When used in the FA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) TxDOT has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without TxDOT providing any comments, exceptions, objections, rejections or disapprovals.

6.3.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the FA Documents indicate that Developer is to deliver a Submittal to TxDOT but express no requirement for TxDOT review, comment, disapproval, prior approval or other TxDOT action, then Developer is under no obligation to provide TxDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and TxDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 6.3.7.1. No failure or delay by TxDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute a TxDOT-Caused Delay, TxDOT Change, Relief Event, Compensation Event or other basis for any Claim.

6.3.7 Resolution of TxDOT Comments and Objections

6.3.7.1 If the Submittal is one not governed by Section 6.3.3, TxDOT's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds:

(a) The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, term or provision of the FA Documents or Facility Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;

(c) Developer has not provided all content or information required in respect of the Submittal or subject provisions thereof, provided that TxDOT assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not usual and customary arrangements that TxDOT offers or accepts for addressing similar circumstances affecting its own projects.

6.3.7.2 Developer shall respond to all of TxDOT's and the Independent Engineer's comments and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this Section 6.3. Developer acknowledges that TxDOT or the Independent Engineer may provide comments and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 6.3.7.1. Developer agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Section 6.3. However, if the Submittal is not governed by Section 6.3.3, the foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve objections that are not on any of the grounds set forth in Section 6.3.7.1 and would result in a delay to a Critical Path on the applicable Facility Schedule, in an increase in Developer's costs or a decrease in Toll Revenues, except pursuant to a TxDOT Change. If, however, Developer does not accommodate or otherwise resolve any comment or objection, Developer shall deliver to TxDOT within a reasonable time period, not to exceed 30 days after receipt of TxDOT's and the Independent Engineer's comments or objections, a written explanation why modifications based on such comment or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

6.3.7.3 The foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to a TxDOT Change.

6.3.7.4 If Developer fails to notify TxDOT within such time period, TxDOT may deliver to Developer a written notice stating the date by which Developer was to have addressed TxDOT's and the Independent Engineer's comments and that if Developer does not address those comments within five Business Days after receipt of this notice, then that failure shall constitute Developer's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to a TxDOT-Caused Delay, Change Order, Relief Event, Compensation Event or other Claim, including any Claim that TxDOT assumes design or other liability.

6.3.7.5 After TxDOT receives Developer's explanation as to why the modifications are not required as provided in Sections 6.3.7.2, 6.3.7.3 and 6.3.7.4, the Parties shall attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, it shall be resolved according to the Dispute Resolution Procedures except (a) as provided otherwise in Section 6.3.3, and (b) if TxDOT elects to issue a Directive Letter pursuant to Section 14.3 with respect to the disputed matter, Developer shall proceed in accordance with TxDOT's directive while retaining any Claim as to the disputed matter.

6.3.8 Limitations on Developer's Right to Rely

6.3.8.1 No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of Substantial Completion, Service Commencement and Final Acceptance), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of TxDOT or the Independent Engineer, and no lack thereof by TxDOT or the Independent Engineer, shall constitute acceptance of materials or Work or waiver of any legal or equitable right under the FA Documents, at Law, or in equity. TxDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work which must be done to bring the Work and Facility (other than the design and construction of the TxDOT Works) into compliance with requirements of the FA Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by TxDOT or the Independent Engineer. Regardless of any such activity or failure to conduct any such activity by TxDOT or the Independent Engineer, Developer at all times shall have an independent duty and obligation to fulfill the requirements of the FA Documents. Developer agrees and acknowledges that any such activity or failure to conduct any such activity by TxDOT or the Independent Engineer:

- (a) Is solely for the benefit and protection of TxDOT;
- (b) Does not relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;
- (c) Does not create or impose upon TxDOT any duty or obligation toward Developer to cause it to fulfill the requirements of the FA Documents;
- (d) Shall not be deemed or construed as any kind of warranty, express or implied, by TxDOT;
- (e) May not be relied upon by Developer or used as evidence in determining whether Developer has fulfilled the requirements of the FA Documents; and
- (f) May not be asserted by Developer against TxDOT as a defense, legal or equitable, to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the FA Documents.

The foregoing does not in any manner waive or lessen TxDOT's obligations under Article 25.

6.3.8.2 Developer shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the FA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 6.3.8.1 or failure to conduct any such activity by TxDOT or the Independent Engineer. Such activity by TxDOT or the Independent Engineer shall not relieve Developer from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work or Developer Defaults.

6.3.8.3 To the maximum extent permitted by Law, Developer hereby releases and discharges TxDOT and the Independent Engineer from any and all duty and obligation to cause Developer's Work or the Facility (except in respect of design and

construction of the TxDOT Works) to satisfy the standards and requirements of the FA Documents. The Independent Engineer is an intended third party beneficiary of this provision.

6.3.8.4 Notwithstanding the provisions of Sections 6.3.8.1, 6.3.8.2 and 6.3.8.3:

(a) Developer shall be entitled to rely on written approvals and acceptances from TxDOT (i) for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within its sole discretion, but only to the extent that Developer is prejudiced by a subsequent decision of TxDOT to rescind such approval or acceptance;

(b) Developer shall be entitled to rely on specific written Deviations TxDOT approves under Section 7.2.3 or 8.1.2.10;

(c) Developer shall be entitled to rely on the certificates of Substantial Completion, Service Commencement and Final Acceptance from TxDOT for the limited purpose of establishing that Substantial Completion, Service Commencement and Final Acceptance, as applicable, have occurred, and the respective dates thereof;

(d) TxDOT is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement TxDOT delivers to Developer; and

(e) TxDOT is not relieved from performance of its express responsibilities under the FA Documents in accordance with all standards applicable thereto.

6.3.9 Segment 3C Facility Segment Submittals

For the convenience of the Parties, Exhibit 32 sets forth the Submittals that are required to update various plans or that are otherwise required to carry out the Work for the Segment 3C Facility Segment. Exhibit 32 is not necessarily an all-inclusive list of required Submittals. All updates to plans listed in Exhibit 32 shall take into account the Segment 3C Facility Segment. The content of such Submittals that are required to address the new requirements of FHWA respecting quality assurance and quality management for the Segment 3C Facility Segment are subject to approval by TxDOT in its good faith discretion.

6.4 Community Outreach and Public Information

Developer shall provide ongoing information to the public concerning the development, operation, tolling and maintenance of the Facility, in accordance with the Public Information and Communications Plan prepared by Developer pursuant to Section 3 of the Technical Provisions.

6.5 Software Compatibility

Unless otherwise specifically stated in the FA Documents, Developer is responsible for assuring that all software it uses for any aspect of the Facility is compatible with software used by TxDOT. Prior to using any software or version of software not then in use by TxDOT, Developer must obtain written approval from TxDOT. In addition, Developer shall provide to TxDOT staff, at Developer's cost, any software, licenses and training reasonably necessary to assure that TxDOT is able to implement compatible usage of all software utilized by Developer.

Compatible, as used in this Section 6.5, shall mean that the Developer-provided electronic file(s) may be loaded or imported and manipulated by TxDOT using its software with no modifications, preparation or adjustments. All electronic information submitted to TxDOT shall be in native format or, if not available, legible.

ARTICLE 7. DEVELOPMENT OF THE FACILITY

7.1 General Obligations of Developer

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

7.1.1 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 FA Documents expressly specify will be undertaken by TxDOT or other Persons) to construct the Facility and maintain it during construction (except as otherwise contemplated herein in respect of TxDOT Works), so as to achieve Service Commencement and Final Acceptance by the applicable Milestone Schedule Deadlines;

7.1.2 At all times provide a Facility Manager approved by TxDOT who (a) will have full responsibility for the prosecution of the Work, including Design Work, Construction Work and O&M 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 his/her designee approved by TxDOT will be present) at the Site at all times that Design Work or Construction Work is performed, and (d) will be available to respond to the Independent Engineer, TxDOT or its Authorized Representatives;

7.1.3 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), as amended; and

7.1.4 Cooperate with TxDOT, the Independent Engineer, and Governmental Entities with jurisdiction in all matters relating to the Work, including Design Work, Construction Work and O&M Work, including their review, inspection and oversight of the design, construction, operations and maintenance of the Facility and the design and construction of the Utility Adjustments.

7.2 Performance, Design and Construction Standards; Deviations

7.2.1 Subject to Sections 25.1 and 25.3, Developer shall furnish all aspects of the Design Work and all Design Documents, including design required in connection with the operation and maintenance of the Facility, Renewal Work or Upgrades, and shall construct the Facility (except as otherwise contemplated herein in respect of TxDOT Works) and the Utility Adjustments included in the Construction Work as designed, free from Defects, and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the FA Documents (including the Technical Provisions and Technical Documents), (c) the Milestone Schedule and applicable Facility Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, and (f) the approved Facility Management Plan and all component plans prepared or to be prepared thereunder, in each case taking into account the Facility Right of Way limits and other constraints affecting the Facility. Developer also shall construct the Facility (except as contemplated herein in respect of TxDOT Works) and the Utility Adjustments included in the Construction Work in accordance

with (i) the Final Design Documents, and (ii) the Construction Documents, in each case taking into account the Facility Right of Way limits and other constraints affecting the Facility.

7.2.2 The design and construction of the Facility other than the TxDOT Works shall be subject to the requirements of the approved Quality Management Plan.

7.2.3 Developer may apply for TxDOT approval of Deviations from applicable Technical Provisions or Technical Documents regarding design or construction. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Facility Management Plan, Developer shall specifically identify and label the proposed Deviation. TxDOT shall consider in its sole discretion, but have no obligation to approve, any such application. Without limiting such discretion, Developer shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves or substantially achieves TxDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Facility Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. Deviations expressly and specifically allowed by the Technical Provisions with respect to the Segment 3C Facility Segment also shall constitute TxDOT's approval of such Deviations, subject to any terms, conditions, qualifications or limitations related to such Deviations set forth in the Technical Provisions. With the exception of Deviations expressly and specifically allowed in the Technical Provisions with respect to the Segment 3C Facility Segment, TxDOT's lack of issuance of a written Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. TxDOT may elect to process the application as a Change Request under Section 14.2 rather than as an application for a Deviation.

7.2.4 Developer acknowledges that it (a) had the opportunity prior to the Effective Date to identify any provisions of the Technical Provisions or Technical Documents, except in connection with the TxDOT Works, that first took effect as of such date and were erroneous or created a potentially unsafe condition, (b) had the opportunity prior to the Amendment Effective Date to identify any subsequent amendments to the provisions of the Technical Provisions or Technical Documents that first took effect as of the Amendment Effective Date and were erroneous or created a potentially unsafe condition, and (c) the opportunity and duty to notify TxDOT and the Independent Engineer in writing of such fact and of the changes to the provision that Developer believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes after the Effective Date to the Technical Provisions or Technical Documents in effect as of the Effective Date or to adopt changes to the amendments to the Technical Provisions or Technical Documents that first took effect as of the Amendment Effective Date to make the provisions correct and safe, such changes shall not be grounds for a Relief Event, Compensation Event or other Claim, unless (i) Developer neither knew nor had reason to know prior to the Effective Date or the Amendment Effective Date, as applicable, that the provision was erroneous or created a potentially unsafe condition or (ii) Developer knew of and reported to TxDOT the erroneous or potentially unsafe provision prior to the Effective Date or the Amendment Effective Date, as applicable and TxDOT did not adopt reasonable and necessary changes. If Developer commences or continues any Design Work or Construction Work affected by such a change after the need for the change was discovered

or suspected, or should have been discovered or suspected through the exercise of reasonable care, Developer shall bear any additional costs associated with redoing the Work already performed. Inconsistent or conflicting provisions of the FA Documents shall not be treated as erroneous provisions under this Section 7.2.4, but instead shall be governed by Section 1.2.

7.2.5 References in the Technical Provisions or Technical Documents to manuals or other publications governing the Design Work or Construction Work prior to the Service Commencement Date for the applicable Facility Segment shall mean the most recent editions in effect as of the Effective Date, in each case subject to exceptions (if any) thereto set forth in the Technical Provisions that expressly permit or apply a different standard, requirement or provision. Any changes to the Technical Provisions and Technical Documents, including Safety Standards, respecting Design Work or Construction Work prior to an applicable Service Commencement Date for a Facility Segment shall be subject to the Change Order process for a TxDOT Change in accordance with Article 14. Safety Compliance changes shall be in accordance with Section 12.4.

7.2.6 The Parties anticipate that from time to time after the Effective Date, TxDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to Design Work and Construction Work of general application to Comparable Limited Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. TxDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Book 3 by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed in the Technical Provisions or Technical Documents as of the Effective Date, they may, upon inclusion in Book 3, replace and supersede inconsistent provisions of the Technical Provisions and Technical Documents to the extent designated by TxDOT in its sole discretion. TxDOT will identify the superseded provisions in its notice to Developer. Notwithstanding the foregoing:

7.2.6.1 References in the Technical Provisions or Technical Documents to manuals or other publications governing the Design Work or Construction Work for a Capacity Improvement shall mean the most recent editions in effect on the date TxDOT issues the applicable NTP for such Capacity Improvement; and

7.2.6.2 In the absence of a TxDOT Change and except as provided otherwise in Section 7.2.7 with respect to a Change in Law and Section 7.5.3 with respect to Adjustment Standards, if TxDOT adopts the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, prior to the Service Commencement Date of the Segment 3A Facility Segment or the Segment 3C Facility Segment, as the case may be, Developer shall not be obligated to (but may) incorporate the same into its design and construction of the Facility prior to the Service Commencement Date for such Facility Segment.

7.2.7 New or revised statutes or regulations adopted after the Effective Date (as to the Segment 3A Facility Segment) or after the Amendment Effective Date (as to the Segment 3C Facility Segment) that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, related

to the Design Work and Construction Work, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

7.2.8 Refer to Section 12.4 for the timing by which Developer must implement Safety Compliance.

7.3 Design Implementation and Submittals

7.3.1 Developer, through the appropriately qualified and licensed design professionals identified in Developer's Facility Management Plan in accordance with Section 2 of the Technical Provisions, shall prepare designs, plans and specifications in accordance with the FA Documents. Developer shall cause the engineer of record for the Facility to sign and seal all Released for Construction Documents.

7.3.2 Developer shall deliver to TxDOT and the Independent Engineer accurate and complete duplicates of all interim, revised and final Design Documents (including Final Design Documents), Plans and Construction Documents within seven days after Developer completes preparation thereof, in form as provided in the Technical Provisions.

7.4 Facility Right of Way Acquisition

7.4.1 Subject to Section 7.4.7, Developer shall undertake and complete the acquisition of all Facility Right of Way required for the Segment 3A Facility Segment and the Segment 3C Facility Segment in accordance with Section 7 of the Technical Provisions, except for the Facility Right of Way that has been purchased by TxDOT prior to the Effective Date or the Amendment Effective Date, as applicable. Developer shall act as expeditiously as reasonably possible, in compliance with applicable Law and the schedule for such acquisitions approved by TxDOT, to acquire parcels of Facility Rights of Way for the Segment 3C Facility Segment.

7.4.2 All Facility Right of Way, including Additional Properties other than temporary interests in property for Facility Specific Locations, shall be acquired in the name of the State. Subject to Section 7.4.7, Developer shall undertake and complete the acquisition of the Facility Right of Way for the Mandatory Scope, including Additional Properties, in accordance with Section 7 of the Technical Provisions, the approved Right of Way Acquisition Plan and all applicable Laws relating to such acquisition, including the Uniform Act.

7.4.3 Subject to Section 7.4.7, Developer shall be responsible for all costs and expenses associated with acquiring all Facility Right of Way for the Mandatory Scope, including Additional Properties, incurred following NTP1 or NTP1 (3C), as the case may be, including (a) the cost of acquisition services and document preparation, (b) the cost of condemnation proceedings required by the Office of the Attorney General, from special commissioner's hearings through jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, (c) the purchase prices, court awards or judgments, and special commissioner's awards for all parcels required for the Facility or the Work, whether within or outside of the Facility Right of Way, (d) the cost of permanent or temporary acquisition of leases, easement and other interests in real property, including for drainage, temporary work space, lay down

areas, material storage areas, earthwork borrow sites, and any other convenience of Developer, (e) the cost of permitting, (f) closing costs associated with parcel purchases, in accordance with the Uniform Act and TxDOT policies, and (g) relocation assistance payments and costs, in accordance with the Uniform Act. If TxDOT incurs any such costs and expenses on Developer's behalf, TxDOT may submit any invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices prior to delinquency. If TxDOT pays any such costs and expenses on Developer's behalf, Developer shall reimburse TxDOT within 30 days of TxDOT's submittal to Developer of an invoice therefor.

7.4.4 TxDOT shall (a) provide review and approval or disapproval of Acquisition Packages for the Facility Right of Way, including Additional Properties, and (b) except as provided below, undertake eminent domain proceedings, if necessary, for the Facility Right of Way, including Additional Properties in accordance with the procedures and time frames established in Section 7 of the Technical Provisions and the approved Right of Way Acquisition Plan. TxDOT shall be solely responsible for all decisions regarding the exercise of its power of eminent domain, condemnation and the trials and appeals thereof. TxDOT shall provide Developer regular and timely updates of the eminent domain proceedings. TxDOT shall to all practicable extent, consult with Developer with respect to the eminent domain process in order to remain informed of Developer's concerns and input.

7.4.5 Except as otherwise authorized by Law for temporary Facility Specific Locations, (a) TxDOT shall not be obligated to exercise its power of eminent domain in connection with Developer's acquisition of any such temporary right or interest, (b) TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests, and (c) Developer shall have no obligation to submit Acquisition Packages to TxDOT for, or obtain TxDOT's approval of Developer's acquisition of, any such temporary right or interest.

7.4.6 Developer's designated Right of Way Acquisition Manager, referred to herein as the ROW AM, shall be entitled to undertake the right-of-way acquisition services for the Facility Right of Way, including Additional Properties but excluding any Facility Right of Way required for the GP Capacity Improvements or the 3C Ultimate Capacity Improvement, described in Section 7 of the Technical Provisions on behalf of TxDOT as its agent for such limited purpose, subject to the conditions and limitations of this Section 7.4.6.

7.4.6.1 In performing such activities, the ROW AM shall at all times follow the standard of care and conduct and be subject to the Laws applicable to a licensed real estate broker in the State, and shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all communications and interactions with the owners or occupants of the real property in which Developer seeks to obtain any right or interest.

7.4.6.2 Developer shall not be entitled to a Change Order or Claim as a result of the actions or omissions of the ROW AM in connection with the ROW AM's activities in carrying out the limited agency provided herein.

7.4.7 TxDOT's Financial Obligations

7.4.7.1 TxDOT shall directly pay (a) the first \$65,294,000 of the acquisition price (but not title insurance, escrow fees and transfer fees and taxes or any other costs or expenses related to such acquisition) for all parcels of Facility Right of Way for the Segment 3A Facility Segment, and (b) the first \$18 million of the acquisition prices, severance

damages and relocation costs (but not title insurance, escrow fees and transfer fees and taxes or any other costs or expenses related to such acquisition) for ROW parcels for the non-tolled portions of the Facility Extension portion of the Segment 3C Facility Segment, minus (from the \$18 million) any amount TxDOT paid or incurred prior to the Amendment Effective Date for acquisition prices, severance damages and relocation costs in connection with the acquisition of any ROW parcels for the Facility Extension portion of the Segment 3C Facility Segment. Developer shall deliver to TxDOT the documentation setting forth the amounts owing for such acquisition prices, as early as possible prior to closing of such acquisitions.

7.4.7.2 TxDOT shall pay Developer an amount equal to its reasonable and documented costs and expenses incurred to remove and clear archeological, paleontological and/or cultural resources from parcel numbers 852 and 853 to the extent such work and related budgets are approved by TxDOT prior to the initiation of any such work.

7.4.7.3 Notwithstanding anything to the contrary set forth in Section 7.4.7, including, for the avoidance of doubt, Section 7.4.7.1, TxDOT shall pay to Developer on Financial Close \$7,100,000 for additional ROW acquisition costs. Developer acknowledges receipt of such amount.

7.4.7.4 If TxDOT makes any payments to Developer for the costs to initially design and construct the Segment 3C Facility Segment, then (a) Developer shall use such payments only to fund design and construction of the non-tolled portions of the Segment 3C Facility Segment, and (b) Developer shall separately identify in its Payment Requests those costs that are for Work performed on Managed Lanes and those costs that are for other Work. The foregoing shall not apply to payments from TxDOT for Compensation Events or for Termination Compensation.

7.5 Utility Adjustments

7.5.1 Developer's Responsibility

Subject to Section 25.5, Developer is responsible for causing, in accordance with the applicable Facility Schedule, all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Facility. When used in the FA Documents with respect to Utilities, the phrase "accommodation of the Facility" or similar terminology refers to accommodation of the Facility in its initial configuration and in its Ultimate Configuration (including in those locations where only the initial configuration of the Facility is being constructed as part of the current phase), except as may be otherwise provided in Section 6.1 of the Technical Provisions. All Utility Adjustment Work performed by Developer shall comply with the FA Documents. Developer shall coordinate, monitor, and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the FA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Article 13 and Section 25.5.1, Developer shall continue to be the responsible party to TxDOT for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities that might impact the Facility or be impacted by it (whether located within or outside the Facility Right of Way) are compatible with the Facility.

7.5.2 Utility Agreements

7.5.2.1 Subject to Section 25.5.2, as described in Section 6 of the Technical Provisions, Developer is responsible for preparing, negotiating and entering into Utility Agreements with the Utility Owners, using the standard Utility Agreement forms specified in Section 6.1 of the Technical Provisions. If Developer proposes to make any revisions to a standard Utility Agreement form (i.e., revisions to the basic form for Developer's purposes as opposed to those resulting from Developer's negotiations with an individual Utility Owner), Developer shall obtain TxDOT's approval of such revisions as a Deviation in accordance with Section 7.2.3, prior to submitting the revised Utility Agreement form to any Utility Owner for review. TxDOT is not providing any assurances to Developer that the Utility Owners will accept the standard Utility Agreement forms (with or without Developer revisions approved by TxDOT) without negotiating modifications thereto. Any modifications to individual Utility Agreements negotiated by Developer with Utility Owners shall be consistent with the requirements of the FA Documents and acceptable to the Utility Owner, Developer and (subject to the requirements of the FA Documents, including Section 6.1.4 of the Technical Provisions) TxDOT. All Utility Agreements shall incorporate by reference 23 CFR Part 645 Subpart A.

7.5.2.2 TxDOT agrees to cooperate as reasonably requested by Developer in pursuing such Utility Agreements, including attendance at negotiation sessions, providing information reasonably requested by Developer that is within TxDOT's possession, and review of Utility Agreements; provided, however, that such cooperation shall not require TxDOT: (a) to take a position which it believes to be inconsistent with the FA Documents, the Facility Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or TxDOT policy, or (b) to refrain from taking a position concurring with that of a Utility Owner, if TxDOT believes that position to be correct. Although TxDOT will not be a party to the Utility Agreements specified in Section 7.5.2.1, Developer shall cause the Utility Agreements to designate TxDOT as an intended third-party beneficiary thereof and to permit assignment of Developer's right, title and interest thereunder to TxDOT without necessity for Utility Owner consent. Developer shall not enter into any agreement with a Utility Owner that purports to bind TxDOT in any way, unless TxDOT has executed such agreement as a party thereto (TxDOT's signature indicating approval or review of an agreement between Developer and a Utility Owner, or its status as a third-party beneficiary, shall not satisfy this requirement).

7.5.2.3 If a conflict occurs between the terms of an agreement between Developer and a Utility Owner and those of the FA Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Developer and TxDOT; if the foregoing criteria are not relevant to the terms at issue, then the FA Documents shall prevail, unless expressly provided otherwise in the FA Documents.

7.5.2.4 Developer shall comply with and timely perform all obligations imposed on Developer by any Utility Agreement.

7.5.3 Requirements

Each Utility Adjustment required to be performed under Section 7.5.1 (whether performed by Developer or by the Utility Owner) shall comply with the Adjustment Standards in effect as of the Effective Date (or, as to the Segment 3C Facility Segment, as of the

Amendment Effective Date), together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreement(s). In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreement(s), and all other requirements specified in Section 6 of the Technical Provisions.

7.5.4 Utility Adjustment Costs

7.5.4.1 Subject to Sections 7.5.4.2 and 7.5.4.7, Developer is responsible for all costs of the Utility Adjustment Work, whether incurred by Developer or by the Utility Owner, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, and excluding (a) costs attributable to Betterment and (b) any other costs for which the Utility Owner is responsible under applicable Law at the time of Adjustment. The Parties agree that as of the Effective Date, under Transportation Code, Section 203.092 the Utility Owner is responsible for 50% of the costs of Utility Adjustment Work, except for (i) Adjustments required for any portion of the Facility that is being constructed as part of an interstate highway, (ii) Adjustments as to which the Utility Owner has a compensable property interest in the land occupied by the Utility to be Adjusted, and (iii) Adjustments completed on or after September 1, 2013 which do not fall within either of the previous two exceptions. As of the Effective Date, Transportation Code, Section 203.092 further provides that for the exceptions under clauses (i) and (ii) above, the Utility Owner is responsible for none of the costs of the Utility Adjustment Work and for the exception under clause (iii) above, the Utility Owner is responsible for 100% of the costs of the Utility Adjustment Work. Subject to Sections 7.5.4.7 and 25.5.3, Developer shall fulfill its responsibility for all or part of the costs of Utility Adjustment Work either by performing the Utility Adjustment Work itself at its own cost (although Developer may seek reimbursement from the Utility Owner for its share, if any, of such costs and except that any assistance provided by any Developer-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work, in compliance with Section 6.2.4.2 of the Technical Provisions), or by reimbursing the Utility Owner for Developer's share of the Utility Owner's eligible costs of performing Utility Adjustment Work (however, Developer has no obligation to reimburse Utility Adjustment costs for any Service Line Adjustment for which the affected property owner has been compensated pursuant to Section 7.4). Developer shall collect direct from the Utility Owner any reimbursement due to Developer for Betterment costs or for other costs that are the Utility Owner's responsibility under applicable Law.

7.5.4.2 For each Utility Adjustment, the eligibility of particular Utility Owner costs (both indirect and direct) for reimbursement by Developer and any credits due against those costs (e.g., for Betterment), as well as the determination of any Betterment or other costs due to Developer from a Utility Owner, shall be established in accordance with applicable Law and the applicable Utility Agreement(s).

7.5.4.3 For each Utility Adjustment required to be performed by Developer under Section 7.5.1, Developer shall compensate the Utility Owner for the fair market value of each Existing Utility Property Interest relinquished pursuant to Section 6.2.4.3 of the Technical Provisions, to the extent TxDOT would be required to do so by applicable Law and provided that TxDOT has approved the Utility Owner's claim. Developer is advised that in some cases reimbursement of the Utility Owner's acquisition costs for a Replacement Utility Property Interest will satisfy this requirement. Developer shall pay any compensation due to the Utility Owner by Developer under Section 7.5.4.1 and all costs and expenses associated

therewith (including any incurred by TxDOT on Developer's behalf for eminent domain proceedings or otherwise) in accordance with Section 7.4. Developer shall carry out the same duties for acquisition of an Existing Utility Property Interest as are assigned to Developer in Section 7.4 and Section 7 of the Technical Provisions for the acquisition of any other necessary real property interests.

7.5.4.4 Developer is solely responsible for collecting directly from the Utility Owner any amounts owed to Developer by the Utility Owner. If for any reason Developer is unable to collect any amounts due to Developer from any Utility Owner, then (a) TxDOT shall have no liability for such amounts, (b) Developer shall have no right to collect such amounts from TxDOT or to offset such amounts against amounts otherwise owing from Developer to TxDOT, and (c) Developer shall have no right to stop Work or to exercise any other remedies against TxDOT on account of such failure to pay.

7.5.4.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Developer shall coordinate with TxDOT and such local Governmental Entity regarding accounting for and approval of those costs.

7.5.4.6 Developer shall maintain a complete set of records for the costs of each Utility Adjustment (whether incurred by Developer or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and Developer costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Developer also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the FA Documents.

7.5.4.7 TxDOT shall directly pay the costs due and owing to Oncor under applicable Law and the terms of the Master Utility Adjustment Agreement (Owner-Managed) with Oncor for the Adjustment of the Oncor Utility; provided such Utility Agreement is entered into in accordance with the applicable provisions of the FA Documents. For the avoidance of doubt, TxDOT shall have no liability for the cost of Oncor Utility Enhancements.

7.5.4.8 Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the result of any Utility Adjustment, whether performed by Developer or by the Utility Owner, except as provided in Article 13.

7.5.5 FHWA Utility Requirements

Unless TxDOT advises Developer otherwise, the following provisions apply to Utility Adjustments:

7.5.5.1 The Facility will be subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Developer shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subpart A as necessary for any Utility Adjustment costs to be eligible for FHWA reimbursement (or for any other federal financing or funding). Each Utility Agreement relating to the Segment 3C Facility Segment shall include the requirement for the Utility Owner to meet the Buy America requirements (as specified in 23 USC 313, 23 CFR § 635.410 and TxDOT's Buy America Guidelines – Utility Accommodations approved by FHWA by letter dated May 31, 2018, receipt

of which Developer acknowledges), except to the extent such requirements establish an exemption for the particular Utility Adjustment. Each such Utility Agreement shall require the Utility Owner to submit to TxDOT its Form 1818 or, in certain circumstances, a written certification, as more particularly provided in the above-referenced Guidelines. Developer acknowledges, however, that without regard to whether such compliance is required, (a) it is not anticipated that Developer will be eligible for FHWA reimbursement of any Utility Adjustment outlays (unless from the Public Funds Amount, [the Segment 3C Public Funds Amount,] the GP Public Funds Amount (if any) or TIFIA financing (if any)), and (b) Developer will not have any share in any reimbursement from FHWA or other federal financing or funding that TxDOT may receive on account of Utility Adjustments.

7.5.5.2 Developer shall prepare and deliver to TxDOT the Alternate Procedure List for the Facility (except in respect of TxDOT Works) in appropriate format for submittal to FHWA, together with all other documentation required by FHWA for compliance with the FHWA Alternate Procedure. If applicable, TxDOT will submit the Alternate Procedure List and other documentation to FHWA.

7.5.5.3 Promptly upon determining that any Utility Owner not referenced on the Alternate Procedure List is impacted by the Facility (excluding the TxDOT Works), Developer shall submit to TxDOT all documentation required by FHWA to add these Utilities to the Alternate Procedure List. If applicable, TxDOT will transmit the additional documentation to FHWA for approval.

7.5.5.4 Promptly upon receiving FHWA's approval of the initial or any amended Alternate Procedure List, TxDOT will forward the approved list to Developer.

7.5.6 Utility Enhancements

7.5.6.1 Developer shall be responsible for addressing any requests by Utility Owners that Developer design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement") in connection with the Facility (excluding the TxDOT Works).

7.5.6.2 Any Betterment performed as part of a Utility Adjustment under Section 7.5, whether by Developer or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Developer shall perform any work on a Utility Owner Project only by separate contract outside of the Work, and such work shall be subject to Section 7.5.8. Under no circumstances shall Developer proceed with any Utility Enhancement that is incompatible with the Facility or is not in compliance with applicable Law, the Governmental Approvals or the FA Documents, including the Milestone Schedule Deadlines. Under no circumstances will Developer be entitled to any additional compensation or time extension hereunder as the result of any Utility Enhancement, whether performed by Developer or by the Utility Owner. Developer may, but is not obligated to, design and construct Utility Enhancements.

7.5.7 Failure of Utility Owners to Cooperate

7.5.7.1 Developer shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for any Utility Adjustment required to be made by Developer under this Section 7.5. Developer shall notify TxDOT immediately if (a) Developer is unable

(or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Utility Agreement within a reasonable time, (b) Developer reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Facility, (c) Developer becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between Developer and a Utility Owner with respect to the Facility, despite Developer's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that TxDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Developer shall provide TxDOT with such information as TxDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the applicable Facility Schedule. After delivering to TxDOT any notice or request for assistance, Developer shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

7.5.7.2 If Developer requests TxDOT's assistance pursuant to Section 7.5.7.1, Developer shall provide evidence reasonably satisfactory to TxDOT that (a) the subject Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the applicable Facility Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) Developer's position in the dispute is otherwise reasonable, (d) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (e) the Utility Owner is not cooperating (the foregoing clauses (a) through (e) are referred to herein as the "conditions to assistance"). Following TxDOT's receipt of satisfactory evidence, TxDOT shall take such reasonable steps as may be requested by Developer to obtain the cooperation of the Utility Owner or resolve the dispute; however, TxDOT shall have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless TxDOT elects to do so in its sole discretion. If TxDOT holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and TxDOT elects in its sole discretion not to exercise those rights, then TxDOT shall assign those rights to Developer upon Developer's request; however, such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. Developer shall reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing such assistance to Developer. Any assistance TxDOT provides shall not relieve Developer of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except in respect of the TxDOT Works. If the reason for the Utility Owner's alleged lack of cooperation is a disagreement with modifications made by Developer to a standard form Utility Agreement in accordance with Section 7.5.2.1, TxDOT's approval of the Deviation shall not be construed as confirmation that Developer's position in the dispute is reasonable. In no event shall TxDOT's obligations pursuant to this Section 7.5.7.2 require TxDOT: (i) to take a position which it believes to be inconsistent with the FA Documents, the Facility Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or TxDOT policy, or (ii) to refrain from taking a position concurring with that of a Utility Owner, if TxDOT believes that position to be correct.

7.5.7.3 If TxDOT objects in writing to a request for assistance pursuant to Section 7.5.7.1, based on Developer's failure to satisfy one or more of the conditions to assistance described in Sections 7.5.7.2(a), (b) and (c), then Developer shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter. If TxDOT objects in writing to a request for assistance pursuant to Section 7.5.7.1 based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 7.5.7.2(d) and (e), then Developer shall take

such action as Developer deems advisable during the next ten days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all TxDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until Developer succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until TxDOT determines, based on evidence Developer presents, that the conditions to assistance have been satisfied. Developer shall have the right to submit the question of the reasonableness of TxDOT's determination for resolution according to the Dispute Resolution Procedures.

7.5.8 Applications for Utility Permits

7.5.8.1 It is anticipated that during the design and construction phases of the Work, from time to time Utility Owners will apply for utility permits to install new Utilities that would cross or longitudinally occupy the Facility Right of Way, or to modify, upgrade, repair, relocate or expand existing Utilities within the Facility Right of Way for reasons other than accommodation of the Facility. The provisions of Sections 7.5.8.2 through 7.5.8.4 shall apply to all such permit applications, except as otherwise provided in Section 7.5.8.5. Except as otherwise provided in Section 7.5.8.4(b) or in Section 11.2, no accommodation of new Utilities or of modifications, upgrades, repairs, relocations or expansions of existing Utilities pursuant hereto shall entitle Developer to additional compensation or time extension hereunder.

7.5.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, Developer shall furnish the most recent Facility design information and/or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of other proposed and existing Utilities. Developer shall keep records of its costs related to new Utilities separate from other costs.

7.5.8.3 Developer shall assist TxDOT in deciding whether to approve a permit described in Section 7.5.8.1. Within a time period that will enable TxDOT to timely respond to the application, Developer shall analyze each application and provide to TxDOT a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. As part of the recommendation process, Developer shall furnish to TxDOT Utility No-Conflict Sign-Off Forms, signed by both Developer's Utility Design Coordinator (UDC) and Developer's Utility Manager, using the standard forms included in Book 2. Developer shall limit the grounds for its recommendation to the grounds (as TxDOT communicates to Developer from time to time) on which TxDOT is legally entitled to approve or deny the application or to impose conditions on its approval.

7.5.8.4 If Developer and TxDOT disagree on the response to a permit application described in Section 7.5.8.1, such disagreement shall be resolved according to the Dispute Resolution Procedures; provided that if Developer recommends against issuance of the permit and TxDOT determines issuance is appropriate or required, then:

(a) TxDOT's determination shall control unless it is arbitrary and capricious;

(b) TxDOT may elect to issue the utility permit in advance of resolution of the Dispute, but if it is finally determined that issuance of the permit was arbitrary and capricious, its issuance shall be deemed a TxDOT Change (and therefore a potential Relief Event and Compensation Event); and

(c) If TxDOT elects to delay issuance of a utility permit pending final resolution of the Dispute, Developer's indemnities under Sections 16.5.1.2 and 16.5.1.4 shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

7.5.8.5 Where TxDOT is pursuing a Business Opportunity involving a Utility in the Facility Right of Way, (a) TxDOT shall have the right to issue utility permits in its sole discretion, (b) any decision by TxDOT to issue utility permits shall be final, binding and not subject to the Dispute Resolution Procedures, (c) Sections 7.5.8.2 through 7.5.8.4 shall not apply, and (d) instead, Section 11.2 shall apply.

7.5.9 Security for Utility Adjustment Costs; Insurance

7.5.9.1 Upon request from a Utility Owner entitled to reimbursement of Utility Adjustment costs which are reimbursable by Developer under Section 7.5.4, Developer shall provide security for such reimbursement by way of a payment bond, letter of credit or retention account, in such amount and on such terms as are negotiated in good faith between Developer and the Utility Owner.

7.5.9.2 Developer may satisfy a Utility Owner's requirement that Developer provide liability insurance by naming such Utility Owner as an additional insured on the insurance provided by Developer or any Contractor pursuant to Article 16.

7.5.10 Early Adjustments

If any Adjustments are designated as Early Adjustments in Section 6 of the Technical Provisions, such Adjustments are anticipated to be completed by TxDOT prior to the deadline therefor set forth in Section 6.1.2.6 of the Technical Provisions. Developer's obligation to provide Protection in Place for Utilities includes any Early Adjustments, whether or not timely completed. Developer shall coordinate with TxDOT and the Utility Owner as may be necessary for orderly completion of any Early Adjustments, and Developer shall conduct its Work without interfering with or hindering the progress or completion of any Early Adjustments. Subject to the provisions of this Section 7.5.10 but notwithstanding any contrary provision of the FA Documents, the Work excludes all efforts necessary for completion of any Early Adjustments.

7.6 Conditions to Commencement of Construction Work and Operating Period

7.6.1 Construction Work and Operating Period Generally

Except to the extent expressly permitted in writing by TxDOT, Developer shall not commence or permit or suffer commencement of construction of the Facility (other than the TxDOT Works) or applicable portion thereof until TxDOT issues NTP2 or NTP2 (3C), as the case may be, and all of the following conditions have been satisfied:

7.6.1.1 All Governmental Approvals (including the TxDOT-Provided Approvals) necessary to begin Construction Work (or the relevant portion thereof) in the applicable portion of the Facility (other than the TxDOT Works) have been obtained, and Developer has furnished to TxDOT fully executed copies of such Governmental Approvals (other than the TxDOT-Provided Approvals);

7.6.1.2 Fee simple title or other property rights acceptable to TxDOT in its sole discretion for the Facility Right of Way necessary for commencement of construction of

the applicable portion of the Facility (other than the TxDOT Works) and Utility Adjustments included in the Construction Work have been identified, conveyed to and recorded in favor of TxDOT, TxDOT has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to TxDOT;

7.6.1.3 Developer has satisfied for the applicable portion of the Facility (other than the TxDOT Works) all applicable pre-construction requirements contained in the NEPA Approval and other Governmental Approvals;

7.6.1.4 Developer has delivered to TxDOT P&P Bonds in accordance with Section 16.2 and Exhibit 31;

7.6.1.5 The guarantees in favor of TxDOT, if any, required under Section 16.4 have been obtained and delivered to TxDOT;

7.6.1.6 All Insurance Policies required under Section 16.1 for construction have been obtained and are in full force and effect, and Developer has delivered to TxDOT written binding verifications of coverage from the relevant issuers of such Insurance Policies;

7.6.1.7 For the Segment 3A Facility Segment, Developer has caused to be developed and delivered to TxDOT and TxDOT has approved, in accordance with Section 9.1 of this Agreement and Section 2 of the Technical Provisions, the component parts, plans and documentation of the Facility Management Plan that are labeled “A” and “B” in the column titled “Required By” in Attachment 2-1 to the Technical Provisions;

7.6.1.8 Developer has delivered to TxDOT and the Independent Engineer all Submittals relating to the Construction Work required by the Facility Management Plan or FA Documents, in the form and content required by the Facility Management Plan or FA Documents;

7.6.1.9 Developer demonstrates to TxDOT’s reasonable satisfaction that Developer has completed training of operations and maintenance personnel, which demonstration shall consist of (a) delivery to TxDOT of a written certificate, in form acceptable to TxDOT, executed by Developer that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Facility in accordance with the terms and conditions of the FA Documents and Facility Management Plan pertaining to the Operating Period, (b) delivery to TxDOT of training records and course completion certificates issued to each of the subject personnel and (c) TxDOT’s verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and Section 4.3.5 of the Technical Provisions;

7.6.1.10 For the Segment 3A Facility Segment, all component parts, plans and documentation of the Facility Management Plan required to be prepared, submitted and approved prior to the Operating Period have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Facility Management Plan;

7.6.1.11 For the Segment 3A Facility Segment, all Submittals required by the Facility Management Plan or FA Documents to be submitted to TxDOT and the

Independent Engineer and approved by TxDOT or the Independent Engineer prior to the Operating Period have been submitted to and approved by TxDOT and the Independent Engineer, in the form and content required by the Facility Management Plan or FA Documents;

7.6.1.12 All applicable Governmental Approvals and other third party approvals required for use and operation have been obtained, Developer has paid all associated fees, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

7.6.1.13 All Insurance Policies required under this Agreement during the Operating Period have been obtained and Developer has delivered to TxDOT verification thereof as required under Section 16.1.2.4;

7.6.1.14 Any Payment and Performance Bonds, including dual obligee riders in favor of TxDOT, required under Section 16.2 during the Operating Period have been obtained and Developer has delivered the same to TxDOT;

7.6.1.15 Any other guaranty of payment or performance required pursuant to Section 16.4 during the Operating Period has been delivered to TxDOT;

7.6.1.16 All representations and warranties of Developer set forth in Section 15.1 shall be and remain true and correct in all material respects;

7.6.1.17 Developer has adopted written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel in dealing with (a) TxDOT and the Independent Engineer and (b) employment relations, in accordance with Section 10.7.1;

7.6.1.18 There exists no uncured Developer Default for which Developer has received written notice from TxDOT, unless, (a) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the TxDOT Claims Account in accordance with the Facility Trust Agreement regarding the amount in dispute, or (b) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period;

7.6.1.19 Developer has provided to TxDOT and the Independent Engineer at least 14 days advance written notification of the date Developer determines that it will satisfy all of the conditions set forth in this Section 7.6.1;

7.6.1.20 The existing facilities, structures and environmentally sensitive areas in the vicinity of the Site but not included as part of the Work under Section 4.3.7 of the Technical Provisions comply with the requirements of the Facility Agreement and the Technical Provisions, as applicable; and

7.6.1.21 In the case of issuance of NTP2, Financial Close has occurred, and in the case of issuance of NTP2 (3C), Financial Close (3C) has occurred; and

7.6.1.22 In the case of the Segment 3C Facility Segment, all Submittals listed in Exhibit 32 as being required prior to issuance of NTP2 (3C) have been submitted to and approved by TxDOT and the Independent Engineer, which Submittals shall take into

account the Segment 3C Facility Segment and shall be in the form and content required by the Facility Management Plan or FA Documents.

7.6.2 Utility Adjustments

Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until TxDOT issues NTP2 or NTP1 (3C), as the case may be, all of the conditions set forth in Section 7.6.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, all of the conditions set forth in Section 6.4.4 of the Technical Provisions have been satisfied and the following additional requirements have been satisfied:

7.6.2.1 If applicable, the Alternate Procedure List has been approved by FHWA, and either the affected Utility or the Utility Owner is on the approved Alternate Procedure List, as supplemented;

7.6.2.2 The Utility Adjustment is covered by an executed Utility Agreement (and any conditions to commencement of such activities that are included in the Utility Agreement have been satisfied); and

7.6.2.3 The review and comment process has been completed and any required approvals have been obtained for the Utility Assembly covering the Utility Adjustment.

7.7 Schedule, Notices to Proceed and Milestone Schedule Deadlines

7.7.1 As a material consideration for entering into this Agreement, Developer hereby commits, and TxDOT is relying upon Developer's commitment, to develop the Facility (other than the TxDOT Works) in accordance with the milestones and time periods set forth in this Agreement, Section 2.1.1 of the Technical Provisions, the applicable Facility Schedule and the Milestone Schedule, subject only to delays caused by Relief Events specifically provided hereunder. Except where this Agreement expressly provides for extension of time due to a Relief Event or allows delay subject to payment of liquidated damages or other compensation to TxDOT, the time limitations set forth in the FA Documents, including the Milestone Schedule, for Developer's performance of its covenants, conditions and obligations are of the essence, and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require TxDOT to accept such performance.

7.7.2 Authorization allowing Developer to proceed with Work hereunder (other than for the GP Capacity Improvements, the 3C Ultimate Capacity Improvement and the GTBR Capacity Improvement) shall be provided through TxDOT's issuance of NTP1 and NTP2, in the case of the Segment 3A Facility Segment, and NTP1 (3C) and NTP2 (3C), in the case of the Segment 3C Facility Segment.

7.7.2.1 TxDOT previously issued NTP1 and NTP1 (3C). Issuance of NTP1 or NTP1 (3C), as the case may be, authorizes Developer to perform (or, after conditional award, continue performance of) the portion of the Work necessary to obtain TxDOT's approval of the component parts, plans and documentation of the Facility Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions and related to the respective Facility Segment. It also authorizes Developer to enter the Facility Right of Way TxDOT owns, after coordinating with TxDOT's Area Office, in order to conduct surveys and site investigations, including geotechnical,

Hazardous Materials and Utilities investigations, and to engage in the other activities anticipated to be performed after NTP1 or NTP1 (3C), as the case may be, referenced in the Technical Provisions, including satisfying the conditions to issuance of NTP2 or NTP2 (3C), as applicable, under Section 7.7.2.2. Issuance of NTP1 or the NTP1 (3C), as the case may be, also authorizes Developer to acquire Facility ROW and perform Utility Adjustment Work related to the respective Facility Segment in accordance with all applicable requirements set forth in this Agreement upon TxDOT's approval of a scope and budget with respect to such acquisition and/or Utility Adjustment Work; provided that all applicable Governmental Approvals required for such Work related to the respective Facility Segment have first been obtained. The scope and budget for Facility ROW acquisition Work submitted for TxDOT's approval must include, at a minimum, a pricing and schedule breakdown for (i) the preliminary design necessary to initiate Facility ROW acquisition Work and (ii) the following items for each parcel: title services, right of entry services, surveying, surveying administrative fee, waiver valuation services, waiver parcel costs, initial appraisal services, initial appraisal review, appraisal/review administrative fee, appraisal update, appraisal update review, negotiation tasks, negotiated parcel cost, administrative settlement costs, closing services, relocation fees, relocation parcel costs, condemnation support, condemnation parcel costs, Phase 1 Hazardous Materials Investigation costs, Developer's Work-related personnel expenses, Developer's Work-related external services, and Developer's overhead and administrative costs and expenses. Issuance of NTP1 or NTP1 (3C), as the case may be, also authorizes Developer to perform the Work required to achieve the conditions to the commencement of Design Work for the respective Facility Segment set forth in clauses (a) through (g) below, and after achievement of the following conditions, commence Design Work for such Facility Segment:

(a) Submittal by Developer to TxDOT and approval by TxDOT, in accordance with Section 9.1 of this Agreement and Section 2 of the Technical Provisions, of all the component parts, plans and documentation of the Facility Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions, and, as to Design Work for the Segment 3C Facility Segment, modifications thereof to take into account the Segment 3C Facility Segment;

(b) Submittal by Developer to TxDOT and approval by TxDOT of Developer's WBS and FBS-2 under Section 2.1 of the Technical Provisions, and, as to Design Work for the Segment 3C Facility Segment, Developer's WBS and FBS-2 for the Segment 3C Facility Segment;

(c) Submittal by Developer to TxDOT and approval by TxDOT of such portions of the Comprehensive Environmental Protection Program (CEPP) related to the Work under Section 4.3 of the Technical Provisions, and, as to Design Work for the Segment 3C Facility Segment, modifications thereof to take into account the Segment 3C Facility Segment;

(d) Submittal by Developer to TxDOT and approval by TxDOT of such portions of the Aesthetics and Landscaping Plan related to the Work under Section 15.3 of the Technical Provisions, and, as to Design Work for the Segment 3C Facility Segment, modifications thereof to take into account the Segment 3C Facility Segment;

(e) All applicable Insurance Policies under Section 16.1 required to be obtained prior to commencement of the Work authorized by NTP1 or NTP1 (3C), as the case may be, have been obtained and are in full force and effect, and Developer has delivered

to TxDOT written binding verifications of such coverage from the relevant issuers of such Insurance Policies;

(f) Submittal by Developer to TxDOT and approval by TxDOT of the Maintenance Management Plan (MMP) under Section 19.2 of the Technical Provisions, and, as to Design Work for the Segment 3C Facility Segment, modifications thereof to take into account the Segment 3C Facility Segment;

(g) TxDOT's prompt written confirmation that all other conditions to the commencement of Design Work expressly provided in the FA Documents under NTP1 or NTP1 (3C), as the case may be, have been achieved.

7.7.2.2 TxDOT previously issued NTP2. TxDOT anticipates issuing NTP2 (3C) within ten days after receipt of notice from Developer and verification by TxDOT that all conditions to commencement of construction set forth in Section 7.6.1 related to the Segment 3C Facility Segment, other than issuance of NTP2 (3C), have been satisfied. Issuance of NTP2 or NTP2 (3C), as the case may be, authorizes Developer to perform all other Work and activities pertaining to the applicable Facility Segment (other than TxDOT Works and Capacity Improvements).

7.7.2.3 Authorization allowing Developer to proceed with Work for the GP Capacity Improvements shall be provided through TxDOT's issuance of a separate NTP GP as further set forth in Part A, Section 1.2 of Exhibit 16.

7.7.2.4 Authorization allowing Developer to proceed with Work for the GTBR Capacity Improvement shall be provided through TxDOT's issuance of a separate NTP GTBR as further set forth in Part A, Section 4.4 of Exhibit 16.

7.7.2.5 Authorization allowing Developer to proceed with Work for the 3C Ultimate Capacity Improvement shall be provided through TxDOT's issuance of a separate NTP 3C UCI as further set forth in Part A, Section 5 of Exhibit 16.

7.7.3 Developer shall satisfy all conditions to issuance of NTP2 by the NTP2 Conditions Deadline and all conditions to issuance of NTP2 (3C) by the NTP2 (3C) Conditions Deadline. Developer shall satisfy all conditions to commencement of the Construction Work generally and commence such Construction Work with diligence and continuity, by the deadline therefor set forth in Exhibit 9, as the same may be extended pursuant to this Agreement, or, with respect to the GP Capacity Improvements, the GTBR Capacity Improvement or the 3C Ultimate Capacity Improvement, by the applicable deadline established pursuant to Exhibit 16, as the same may be extended pursuant to this Agreement.

7.7.4 Developer shall achieve Substantial Completion (other than in respect of the Segment 3B Facility Segment), Service Commencement and Final Acceptance (except for Punch List items in respect of the TxDOT Works) for each Facility Segment for which a notice to proceed has been issued to Developer in accordance with the procedures, requirements and conditions set forth in Section 7.8, and shall achieve Service Commencement and Final Acceptance (except for Punch List items in respect of the TxDOT Works) by the applicable Milestone Schedule Deadline.

7.7.5 Developer shall maintain a separate Preliminary Baseline Schedule for the Segment 3C Facility Segment. Developer hereby represents and warrants that the Preliminary

Baseline Schedule related to the Segment 3A Facility Segment and the Preliminary Baseline Schedule related to the Segment 3C Facility Segment, in each case attached to this Agreement as Exhibit 10, is in the form described in the Technical Provisions, conforms to the Work Breakdown Structure required under Sections 2.1.2 and 2.1.3 of the Technical Provisions, and is consistent with the Milestone Schedule. Subject to Section 25.6, Developer shall use each Preliminary Baseline Schedule as a foundation to prepare a corresponding Facility Baseline Schedule for TxDOT's review and approval prior to issuance of NTP2 or NTP2 (3C), as the case may be, as set forth in Section 2.1.2 of the Technical Provisions. The Parties shall use each Facility Baseline Schedule for planning and monitoring the progress of the Work. Each Facility Baseline Schedule shall include the originally scheduled target for Service Commencement set forth in the corresponding Preliminary Baseline Schedule.

7.7.5.1 Developer shall maintain separate Facility Schedules for the Segment 3C Facility Segment. It is acknowledged that Facility Schedules are critical for ensuring Developer's timely performance of its obligations under the Agreement but that the full level of detail of cost and resource loading with respect to each Schedule Activity may not be available until the strategy, design and similar elements of the Facility are analyzed. At least 30 days prior to commencement of each Schedule Activity, Developer shall submit and receive approval from TxDOT for a Revised Facility Baseline Schedule that is fully cost loaded and, to the extent required under the Technical Provisions, resource loaded for that Schedule Activity and all related Schedule Activities.

7.7.5.2 Developer may not submit a Claim for a Compensation Event or a Relief Event relating to any Schedule Activity unless TxDOT has approved a fully cost loaded and, to the extent required under the Technical Provisions, resource loaded Facility Schedule for that Schedule Activity and any related Schedule Activities in accordance with Section 7.7.5.1.

7.7.6 All Float contained in the Facility Schedule, as shown in the approved Facility Baseline Schedule or as generated thereafter, shall be considered a shared resource of TxDOT, Developer and the applicable Design-Build Contractor, available to any or all such parties as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Milestone Schedule Deadlines, except that (i) Float shall not be available to TxDOT to absorb delays caused by the Relief Events set forth in clauses (d) through (i), (r)(ii), and (t) of the definition of Relief Events and (ii) the applicable Design-Build Contractor shall not be entitled to share in any Float contained in the Facility Schedule unless such Float pertains to its Construction Work, and provided that nothing herein shall be construed as releasing TxDOT from any payment obligation that may relate to such Relief Event as contemplated herein. As for such Relief Events, extensions of time shall be determined as if no Float then exists. All Float shall be shown as such in the Facility Schedule on each affected schedule path. TxDOT shall have the right to examine the identification of (or failure to identify) Float on the Facility Schedule in determining whether to approve the Facility Schedule. Once identified, Developer shall monitor, account for and maintain Float in accordance with critical path methodology. Float for the Segment 3A Facility Segment and the Segment 3C Facility Segment shall be shown separately, and shall be available for the Work only on the Facility Segment to which it relates.

7.8 Substantial Completion, Punch List, Service Commencement, Final Acceptance and Early Openings

7.8.1 Substantial Completion

7.8.1.1 TxDOT will issue a written certificate of Substantial Completion at such time as Substantial Completion occurs for each Facility Segment.

7.8.1.2 Substantial Completion shall occur for a Facility Segment (other than the Segment 3B Facility Segment) upon satisfaction of the following criteria (except clause (f) below in the case of the GP Capacity Improvements, the GTBR Capacity Improvement and the 3C Ultimate Capacity Improvement):

(a) All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(b) All required illumination is installed and functional in accordance with the FA Documents;

(c) All required signs and signals are installed and functional in accordance with the FA Documents;

(d) The need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);

(e) All lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and frontage roads) set forth in the Design Documents are in their final configuration and available for normal and safe use and operation;

(f) The Electronic Toll Collection System is completed, has passed all demonstration and performance testing in accordance with the Facility Management Plan, including demonstration of interoperability with the CSC Host as provided in the Technical Documents, and is ready for normal operation. As part of fulfilling such condition, Developer shall deliver to TxDOT and the Independent Engineer all reports, data and documentation relating to such demonstration testing, and such testing shall demonstrate that the Electronic Toll Collection System meets the minimum threshold performance standards and requirements set forth in the Facility Management Plan, and the minimum interoperability performance standards set forth in the Technical Documents, for commencing normal, live use and operation. (TxDOT and Developer recognize that such threshold performance standards and requirements may be at lower levels, consistent with Good Industry Practice, than the performance standards and requirements set forth in the Performance and Measurement Table Baseline because of normal need for ramp-up and optimization of performance at the beginning of regular operations);

(g) The ITS and safety features for ITS components are installed and functional;

(h) Completion of all Work necessary to provide full integration with any other Facility Segment, if any, and demonstration of continuity of all Elements of the Facility Segment that extend into any other Facility Segment, if any;

(i) Developer has otherwise completed the Construction Work in accordance with the FA Documents, Design Documents and Construction Documents such that the applicable Facility Segment is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable Electronic Toll Collection System meeting the Technical Provisions, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public and for normal tolling operation; and

(j) All drainage appurtenances shall be in place and functioning.

7.8.1.3 TxDOT Substantial Completion shall occur upon satisfaction of the criteria specified in Section 25.3.6.1 respecting the Segment 3B Facility Segment.

7.8.1.4 The Parties shall disregard the status of the landscaping and aesthetic features included in the Design Documents in determining whether Substantial Completion for a Facility Segment other than the Segment 3B Facility Segment has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 7.8.1.2(d).

7.8.1.5 Developer shall provide TxDOT and the Independent Engineer with not less than 20 days' prior written notification of the date Developer determines it will achieve Substantial Completion for the relevant Facility Segment. During such notice period, Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis with the goal being orderly, timely inspection and review by the three parties of the applicable Facility Segment and the applicable Final Design Documents and Construction Documents, and TxDOT's issuance of a written certificate of Substantial Completion.

7.8.1.6 During the period specified in Section 7.8.1.5, the Independent Engineer shall conduct an inspection of the applicable Facility Segment and its components, a review of the applicable Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation within five days after the end of the period specified in Section 7.8.1.5. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within the period specified in Section 7.8.1.5.

7.8.1.7 Developer shall provide TxDOT and the Independent Engineer a second written notification when Developer determines it has achieved Substantial Completion for the relevant Facility Segment. Within five days after expiration of the period specified in Section 7.8.1.5, TxDOT's and the Independent Engineer's receipt of the second notification and TxDOT's receipt of the Independent Engineer's report of findings and recommendations, TxDOT shall either (a) issue the written certificate of Substantial Completion or (b) notify Developer in writing setting forth, as applicable, why the applicable Facility Segment has not reached Substantial Completion. If TxDOT and Developer cannot agree as to the date of

Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.8.1.8 If a Facility Segment reaches Substantial Completion, Developer shall fulfill all conditions to Service Commencement and open the Facility Segment within 60 days after receipt of the certificate of Substantial Completion.

7.8.2 Punch List

7.8.2.1 The Facility Management Plan shall establish procedures and schedules for preparing for each Facility Segment other than the Segment 3B Facility Segment a Punch List and completing Punch List work. Such procedures and schedules shall conform to the following provisions.

7.8.2.2 The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

7.8.2.3 Developer shall prepare and maintain the Punch List. Developer shall deliver to TxDOT and the Independent Engineer not less than five days' prior written notice stating the date when Developer will commence Punch List field inspections and Punch List preparation. The Independent Engineer and TxDOT may, but are not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Developer objects to the addition of an item by TxDOT or the Independent Engineer, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Developer shall deliver to TxDOT and the Independent Engineer a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

7.8.2.4 Developer shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the FA Documents, within the time period to be set forth in the Facility Management Plan and in any case by the applicable Final Acceptance Deadline.

7.8.2.5 The provisions of Section 7.8.2.3 shall apply, *mutatis mutandis*, to the Parties' rights and obligations in connection with the TxDOT Works, with references therein to "Developer" constituting references to "TxDOT" and vice versa.

7.8.3 Conditions to Service Commencement

7.8.3.1 Developer shall not initiate, permit or suffer Service Commencement for any Facility Segment until TxDOT issues a written certificate that all of the following conditions have been satisfied. TxDOT will issue such a written certificate immediately upon satisfaction of all the following conditions for the applicable Facility Segment:

(a) TxDOT has issued a certificate of Substantial Completion, or the Disputes Board has determined that TxDOT should have issued such certificate for the Facility Segment (regardless of whether TxDOT subsequently contests such determination) or should have issued such certificate at a later date for the Segment 3B Facility Segment because

TxDOT did not achieve TxDOT Substantial Completion at the time TxDOT indicates (regardless of whether TxDOT subsequently contests such determination);

(b) All component parts, plans and documentation of the Facility Management Plan required to be prepared, submitted and approved prior to Service Commencement have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Facility Management Plan;

(c) All Submittals required by the Facility Management Plan or FA Documents to be submitted to and approved by TxDOT or the Independent Engineer prior to Service Commencement (including as to the TxDOT Works) have been submitted to and approved by TxDOT and the Independent Engineer, in the form and content required by the Facility Management Plan or FA Documents;

(d) All applicable Governmental Approvals and other third party approvals required for use and operation of the applicable Facility Segment (including the Segment 3B Facility Segment) have been obtained, Developer has paid all associated fees, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

(e) Developer, and, if applicable, TxDOT and the Independent Engineer have completed preparation of the Punch List in accordance with Section 7.8.2;

(f) All Insurance Policies required under this Agreement during the Operating Period have been obtained and Developer has delivered to TxDOT verification thereof as required under Section 16.1.2.4;

(g) Any payment and performance security in favor of TxDOT required under Section 16.2 (or, as to the GP Capacity Improvements or GTBR Capacity Improvement, as the case may be, Section 16.2 as applied pursuant to Part A of Exhibit 16) during the Operating Period has been obtained and Developer has delivered the same to TxDOT;

(h) Any other guaranty of payment or performance required pursuant to Section 16.4 during the Operating Period has been delivered to TxDOT;

(i) Developer has made all deposits to the Intellectual Property Escrow(s) required at or prior to Service Commencement pursuant to Section 22.5;

(j) There exists no uncured Developer Default that is the subject of a Warning Notice, unless (i) Service Commencement will effect its cure, (ii) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the TxDOT Claims Account in accordance with the Facility Trust Agreement and has delivered to TxDOT any letter of credit required pursuant to Section 17.3.5.3(b) regarding the amount in dispute, or (iii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period; and

(k) In respect of Service Commencement for the Segment 3B Facility Segment:

(i) The Electronic Toll Collection System is completed, has passed all demonstration and performance testing in accordance with the Facility Management Plan, including demonstration of interoperability with the CSC Host as provided in the Technical Documents, and is ready for normal operation. As part of fulfilling such condition, Developer shall deliver to TxDOT and the Independent Engineer all reports, data and documentation relating to such demonstration testing, and such testing shall demonstrate that the Electronic Toll Collection System meets the minimum threshold performance standards and requirements set forth in the Facility Management Plan, and the minimum interoperability performance standards set forth in the Technical Documents, for commencing normal, live use and operation. (TxDOT and Developer recognize that such threshold performance standards and requirements may be at lower levels, consistent with Good Industry Practice, than the performance standards and requirements set forth in the Performance and Measurement Table Baseline because of normal need for ramp-up and optimization of performance at the beginning of regular operations); and

(ii) The ITS and safety features for ITS components are installed and functional.

7.8.3.2 Developer shall provide TxDOT and the Independent Engineer with not less than 20 days prior written notification of the date Developer determines that it will satisfy all of the foregoing conditions (other than in Section 7.8.3.1(a), which is governed by the separate notice provisions under Section 7.8.1.5). During such notice period, Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis, with the goal being orderly, timely inspection and review by the three parties (but not necessarily a joint inspection and review) of the applicable Facility Segment and the data and documentation submitted by Developer, and TxDOT's issuance of a written certificate authorizing Service Commencement of the applicable Facility Segment when all the conditions set forth in Section 7.8.3.1 are satisfied.

7.8.3.3 During the period specified in Section 7.8.3.2, the Independent Engineer shall conduct an inspection of the Facility Segment and such other review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to Service Commencement have been satisfied. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection and review and within five days after the end of the period specified in Section 7.8.3.2. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection and review within the period specified in Section 7.8.3.2.

7.8.3.4 Developer shall provide TxDOT and the Independent Engineer a second written notification when Developer determines that it has satisfied all of the foregoing conditions (other than in Section 7.8.3.1(a)). Within five days after expiration of the period specified in Section 7.8.3.2, TxDOT's and the Independent Engineer's receipt of the second notification and TxDOT's receipt of the Independent Engineer's report of findings and recommendations, and provided the condition precedent set forth in Section 7.8.3.1(a) is satisfied, TxDOT shall either (a) issue a certificate authorizing Service Commencement for the Facility Segment or (b) notify Developer in writing setting forth, as applicable, why the conditions to Service Commencement have not been satisfied. If at the time the foregoing conditions (other than in Section 7.8.3.1(a)) are satisfied Substantial Completion for a Facility Segment is not yet achieved, then as a condition to TxDOT's issuance of a certificate authorizing Service Commencement for such Facility Segment TxDOT shall have the right to

verify that at the time of Substantial Completion the condition precedent set forth in Section 7.8.3.1(j) remains satisfied. If TxDOT and Developer cannot agree as to the date of Service Commencement, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.8.4 Final Acceptance

7.8.4.1 Promptly after achieving Substantial Completion for a Facility Segment (other than the Segment 3B Facility Segment), Developer shall perform all remaining Construction Work for such Facility Segment, including completion of all Punch List items, all landscaping other than vegetative ground cover and aesthetic features. Developer shall prepare and adhere to a timetable for planting and establishing the vegetative ground cover landscaping, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for vegetative ground cover landscaping to be planted and established by 12 months after Substantial Completion for such Facility Segment.

7.8.4.2 Promptly after TxDOT Substantial Completion has been achieved, TxDOT shall complete all Punch List items in respect of the TxDOT Works.

7.8.4.3 TxDOT will issue a written certificate of Final Acceptance at such time as all of the following have occurred for the applicable Facility Segment:

(a) All requirements for Substantial Completion and Service Commencement for such Facility Segment have been satisfied;

(b) All Punch List items have been completed and delivered to the reasonable satisfaction of TxDOT;

(c) All aesthetic and landscaping features (other than vegetative ground cover landscaping) have been completed in accordance with Section 15 of the Technical Provisions and the plans and designs prepared in accordance therewith;

(d) TxDOT has received a complete set of the Record Drawings, signed and sealed by a Registered Professional Engineer and in form and content required by Section 2.2.7.2 of the Technical Provisions, provided that TxDOT may, but is not obligated to, issue a written waiver of this condition as to the TxDOT Works;

(e) As to the Segment 3C Facility Segment, TxDOT has received from Developer all the topographic mapping and aerial photography files required by Section 9.5.1 of the Technical Provisions;

(f) As to the Segment 3C Facility Segment, TxDOT has received from Developer the photometric data results for all lighted areas within the Segment 3C Facility Segment as required by Section 16.5.4 of the Technical Provisions;

(g) All Utility Adjustment Work and other work that Developer or TxDOT, as applicable, is obligated to perform for or on behalf of third parties has been accepted by such third parties, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts;

(h) Developer has made all deposits to the Intellectual Property Escrow(s) required at or prior to Final Acceptance pursuant to Section 22.5;

(i) TxDOT has approved the as-built schedule submitted by Developer in accordance with Section 2.1.5 of Book 2;

(j) Developer has paid in full all liquidated damages that are owing to TxDOT pursuant to this Agreement and are not in Dispute, and has provided to TxDOT reasonable security for the full amount of liquidated damages that may then be the subject of an unresolved Dispute; and

(k) There exist no uncured Developer Defaults that are the subject of a Warning Notice, or with the giving of notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Acceptance will effect its cure).

7.8.4.4 Developer shall provide TxDOT and the Independent Engineer with written notification when Developer determines Final Acceptance has been achieved. During the 15-day period following receipt of such notification, Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's and the Independent Engineer's orderly, timely inspection and review of the Facility Segment and the Record Drawings, and TxDOT's issuance of a written certificate of Final Acceptance.

7.8.4.5 During such 15-day period, the Independent Engineer shall conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied. The Independent Engineer shall deliver a written report of findings and recommendations to TxDOT and Developer following such inspection, review and investigation and in any case by the end of such 15-day period. TxDOT may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within such 15-day period. As to the Segment 3B Facility Segment, Developer may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within such 15-day period.

7.8.4.6 Within five days after expiration of such 15-day period and TxDOT's receipt of the Independent Engineer's report of findings and recommendations, TxDOT shall either (a) issue a certificate of Final Acceptance or (b) notify Developer in writing setting forth, as applicable, why Final Acceptance has not been achieved. If TxDOT and Developer cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the Dispute Resolution Procedures.

7.8.5 Early Opening and Operation

7.8.5.1 In addition to Developer's obligations under Section 18 of the Technical Provisions, prior to the Service Commencement Date for a Facility Segment, and consistent with Section 8.3.3, Developer shall (a) have the right and obligation to open to traffic, operate and maintain portions of the Facility Segment crossing the Facility Right of Way that Developer or TxDOT completes where such opening is safe and necessary or advisable for crossing traffic circulation and (b) have the right to open to traffic, operate and maintain discrete portions of the Facility Segment that Developer or TxDOT completes to the extent

safe and necessary or advisable to enable orderly traffic management on the Facility during construction of other portions of the Facility. Except as otherwise contemplated in Section 7.8.5.2 below, if the portion opened is to be tolled, no tolling shall commence thereon until the Service Commencement Date therefor, but the portion shall first be adequately posted with signs informing the public that it is a tolled roadway and of the estimated date when tolls will commence.

7.8.5.2 Prior to the Service Commencement Date for a Facility Segment, and consistent with Section 8.3.3, the Parties may mutually agree to open to traffic, operate, maintain and toll discrete completed portions of such Facility Segment, with Developer operating and maintaining such portions in accordance with the terms hereof (without regard to whether the Operating Commencement Date for the Segment 3B Facility Segment has occurred). At least 14 days prior to the commencement of such tolling, the portion to be tolled shall be adequately posted with signs informing the public that it is a tolled roadway and of the estimated date when tolls will commence.

7.8.5.3 Developer shall not undertake any early openings until all Insurance Policies required under the FA Documents in connection with operations and maintenance are in effect. Developer shall undertake early openings consistently with and in accordance with the TxDOT-approved Traffic Management Plan. No early openings shall be relevant for determining Substantial Completion, Service Commencement or Final Acceptance, or determining whether Milestone Schedule Deadlines are satisfied.

7.9 Hazardous Materials Management

7.9.1 Without limiting TxDOT's role or responsibilities set forth in Sections 7.9.3, 7.9.5 and 7.9.7 and except as provided otherwise in Exhibit 11, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in, on or under the Facility Right of Way (other than in connection with the Segment 3B Facility Segment prior to TxDOT Substantial Completion, except at TxDOT's cost and expense) or Project-Specific Locations in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the FA Documents. If during the course of the Work, Developer encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Facility, Facility Right of Way or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the FA Documents, Developer shall (a) promptly notify TxDOT in writing and advise TxDOT of any obligation to notify State or federal agencies under applicable Law; (b) notify any such State or federal agencies required to be notified under applicable Law; and (c) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If during the Term TxDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Facility, Facility Right of Way or Work, TxDOT shall promptly notify Developer in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable or is required by applicable Law, Developer shall utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities. Wherever feasible and consistent with applicable Law and Good Industry Practice, Developer shall not dispose of contaminated soil and groundwater off-site.

7.9.2 Either Party, at its election and expense, or both Parties by joint election and at equal expense, shall have the right to conduct and complete (a) a Phase 1 Hazardous Materials Investigation of each parcel of the Facility Right of Way, and (b) a Phase 1 Hazardous Materials Investigation of each parcel of Additional Properties to be added to the Facility Right of Way due to TxDOT Changes, in each case not later than 90 days after the date TxDOT makes available to Developer such parcel. (For this purpose “makes available” has the meaning set forth in the definition of Pre-Existing Hazardous Materials.) Any such update shall supplement the Phase 1 Hazardous Materials Investigation conducted for TxDOT prior to the Effective Date as identified in the definition of Pre-Existing Hazardous Materials. The Party causing any such updated or original Phase 1 Hazardous Materials Investigation to be prepared shall deliver to the other Party for review and comment a draft written report of the Phase 1 Hazardous Materials Investigation. After receiving the other Party’s comments, if any, the preparing Party shall complete and deliver to the other Party a final written report of the Phase 1 Hazardous Materials Investigation within five days after the final written report is issued and within the foregoing applicable time period.

7.9.3 The right of one Party to step in to carry out remedial action obligations of the other Party are as follows:

7.9.3.1 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer’s schedule for use of and operations on the Facility Right of Way, Developer has not undertaken remedial action required of it under Section 7.9.1, TxDOT may provide Developer with written notice that it will undertake the remedial action itself. TxDOT thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. Without limiting TxDOT’s role or responsibilities set forth in Sections 7.9.5 and 7.9.7, Developer shall reimburse to TxDOT on a current basis the reasonable costs, including TxDOT’s Recoverable Costs, TxDOT incurs in carrying out such remediation plan.

7.9.3.2 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of remedial action required and the potential impact upon Developer’s schedule for use of and operations on the Facility Right of Way, TxDOT has not undertaken remedial action required of it under Section 7.9.7 or Exhibit 11, Developer may provide TxDOT with written notice that it will undertake the remedial action itself. Developer thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. TxDOT shall reimburse to Developer on a current basis the reasonable costs Developer incurs in carrying out such remediation plan.

7.9.3.3 Notwithstanding the foregoing, if either Party notifies the other that it desires to preserve claims against other potentially responsible parties, then the Party undertaking the remedial act shall take all commercially reasonable efforts to preserve such claims consistently with either the National Contingency Plan or comparable State regulations and standards; and a reasonable period of time for Developer or TxDOT, as the case may be, to perform the remedial work shall include a sufficient period for Developer or TxDOT, as the case may be, to comply with the National Contingency Plan or such comparable State regulations and standards.

7.9.4 Except for TxDOT Release(s) of Hazardous Materials, except as set forth in Section 7.9.3 and Exhibit 11, and without limiting TxDOT's role or responsibilities set forth in Sections 7.9.5 and 7.9.7, Developer shall not be entitled to any compensation due to increased costs or delays associated with the discovery, handling, storage, removal, remediation, transport, treatment or disposal of Hazardous Materials, including contaminated groundwater, encountered in construction of the Facility or Utility Adjustments, but may be entitled to schedule relief under Article 13 to the extent such event constitutes a Relief Event and to other relief under Section 19.2 to the extent such event constitutes an Extended Relief Event.

7.9.5 Off-site disposal of Pre-Existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material is subject to the following provisions.

7.9.5.1 As between Developer, each Design-Build Contractor and TxDOT, TxDOT shall be considered the generator and arranger solely for Pre-Existing Hazardous Materials and TxDOT Release(s) of Hazardous Material. Such assumption of generator and arranger status does not relieve Developer from its scope of responsibilities under Section 7.9.1. Whenever TxDOT has such arranger liability, Developer's Site Investigation Report and remediation plans shall be subject to the prior written approval of TxDOT.

7.9.5.2 TxDOT has exclusive decision-making authority regarding selection of the destination facility to which the Pre-Existing Hazardous Materials or Hazardous Materials from TxDOT Release(s) of Hazardous Material will be transported. With regard to Pre-Existing Hazardous Materials and TxDOT Release(s) of Hazardous Material, TxDOT shall comply with the applicable standards for generators and arrangers including those found at 40 CFR Part 262, including the responsibility to sign manifests for the transport of hazardous wastes. The foregoing shall not preclude or limit any rights, remedies or defenses that TxDOT or Developer may have against any Governmental Entity or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Facility Right of Way.

7.9.5.3 Notwithstanding any contrary provision of the FA Documents, under no circumstances whatsoever shall any TxDOT-Caused Delay arising out of or relating to (a) its review and approval or disapproval of remediation plans for removal and off-Site disposal of Pre-Existing Hazardous Materials or Hazardous Materials that any Person claims to be Pre-Existing Hazardous Materials, (b) any other act or failure to act by TxDOT in its capacity as generator and arranger for off-Site disposal of Pre-Existing Hazardous Materials, or (c) any Dispute over whether Hazardous Materials are Pre-Existing Hazardous Materials constitute a Compensation Event or otherwise entitle Developer to any compensation from TxDOT or other remedy against TxDOT, other than remedies available where any of the foregoing constitutes a Relief Event or Extended Relief Event.

7.9.5.4 To the extent permitted by applicable Law, TxDOT shall indemnify, save, protect and defend Developer and each Design-Build Contractor from Third Party Claims and Third Party Losses arising out of or related to generator or arranger liability for the Pre-Existing Hazardous Materials and Hazardous Materials from TxDOT Release(s) of Hazardous Material for which TxDOT is considered the generator and arranger pursuant to this Section, specifically excluding generator and arranger liability for actual and threatened Developer Releases of Hazardous Materials.

7.9.6 As between Developer and TxDOT, Developer shall be considered the generator and arranger and assume generator and arranger responsibility solely for Hazardous Materials that are other than Pre-Existing Hazardous Materials and TxDOT Release(s) of Hazardous Materials. For such Hazardous Materials, TxDOT will assist Developer in identifying potentially responsible parties, provided Developer reimburses TxDOT for reasonable costs, including TxDOT's Recoverable Costs, incurred in providing such assistance. The foregoing shall not preclude or limit any rights or remedies that Developer may have against any Governmental Entity or any other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Facility Right of Way, excluding, however, TxDOT and the Texas Transportation Commission and their respective agents. To the extent permitted by applicable Law, Developer shall indemnify, save, protect and defend TxDOT from Third Party Claims and Third Party Losses arising out of or related to generator or arranger liability for such Hazardous Materials for which Developer is considered the generator and arranger pursuant to this Section.

7.9.7 Notwithstanding anything to the contrary set forth in this Section 7.9 or any other provision of this Agreement or any other FA Documents, TxDOT shall, at its cost, manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in, on or under such portion of the Facility Right of Way where the TxDOT Works are performed as required by applicable Law and Governmental Approvals in connection with construction of the TxDOT Works. TxDOT's obligation to carry out such activities with respect to the Segment 3B Facility Segment shall cease on the TxDOT Substantial Completion Date.

7.10 Environmental Compliance

7.10.1 Throughout the course of the Design Work and Construction Work, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval, and any other Governmental Approvals for the Facility (other than in respect of the TxDOT Works), or under the FA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals in accordance with Section 4 of the Technical Provisions.

7.10.2 Throughout the course of the design, development and construction of the TxDOT Works, TxDOT shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval, and any other Governmental Approvals for the TxDOT Works in accordance with applicable Law.

7.11 Oversight, Inspection and Testing; Meetings

7.11.1 Oversight by Independent Engineer

The Independent Engineer will perform oversight, inspection, testing and auditing respecting the Design Work and Construction Work in accordance with Section 9.3 and the Independent Engineer Joint Work Authorization.

7.11.2 Oversight by TxDOT

TxDOT's rights of oversight, inspection, testing and auditing respecting the Design Work and Construction Work are set forth in Sections 9.3 and 22.2.

7.11.3 Meetings

7.11.3.1 Developer shall conduct regular progress meetings with TxDOT at least once a month during the course of design and construction, including design and construction of the TxDOT Works. At TxDOT's request, Developer will require the applicable Design-Build Contractor to attend the progress meetings and other meetings concerning matters pertaining to such Design-Build Contractor, its work or the coordination of its work with other Contractors and with TxDOT and its contractors pursuant to Section 11.1.1. At Developer's request, TxDOT will require its prime contractor(s) to attend progress meetings and other meetings concerning matters pertaining to such contractor, its work or the coordination of its work with Developer and the applicable Design-Build Contractor pursuant to Section 11.1.1.

7.11.3.2 In addition, TxDOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Design Work, Construction Work or Facility.

7.11.3.3 Developer shall schedule all meetings with TxDOT at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide TxDOT with written notice and a meeting agenda at least three Business Days in advance of each meeting.

7.11.3.4 Developer shall take meeting minutes when present and submit them to TxDOT and the Independent Engineer within five Business Days. TxDOT and the Independent Engineer shall send their comments, if any, to the meeting minutes within five Business Days after receipt. Developer shall incorporate any comments timely received and send the final meeting minutes two Business Days after receiving all comments.

7.12 Contractor Warranties

7.12.1 If and to the extent Developer obtains general or limited warranties from any Contractor in favor of Developer with respect to design, materials, workmanship, equipment, tools, supplies, software or services, Developer also shall cause such warranty to be expressly extended to TxDOT and any third parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Contractor; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to TxDOT using commercially reasonable efforts. TxDOT agrees to forebear from exercising remedies under any such warranty so long as Developer or a Lender is diligently pursuing remedies thereunder. To the extent that any Contractor warranty 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.

7.12.2 Contractor warranties (if any) are in addition to all rights and remedies available under the FA Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the FA 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.

7.13 Existing Improvements

TxDOT is delivering to Developer (i) the Existing Improvements in the Segment 3A Facility Segment on the date TxDOT issues NTP2 and the Existing Improvements in the Segment 3C Facility Segment on the date TxDOT issues NTP2 (3C), and (ii) except to the extent otherwise expressly required pursuant to Article 25 with respect to the TxDOT Works, the Existing Improvements (not otherwise constituting part of the TxDOT Works) in the Segment 3B Facility Segment on the TxDOT Substantial Completion Date, as is, with all faults, known and unknown, suspected and unsuspected, and without any TxDOT obligation to reconstruct, rehabilitate, renew, replace, renovate, or repair. Beginning on the date TxDOT issues NTP2 or NTP2 (3C), as the case may be, as to the Existing Improvements in the Segment 3A Facility Segment or the Segment 3C Facility Segment, as applicable, and on the TxDOT Substantial Completion Date as to the Existing Improvements in the Segment 3B Facility Segment (except to the extent the Existing Improvements are part of the TxDOT Works subject to Article 25), Developer assumes all responsibility and liability associated with such Existing Improvements, including *inter alia* any improvements constructed by TxDOT or by third parties, any impacts upon initial design and construction, and defects affecting operations, maintenance, renewal and replacement requirements. TxDOT does not provide, and hereby expressly disclaims, any and all warranties of any kind, whether express or implied, with respect to the Existing Improvements, except to the extent expressly provided in Article 25 for the TxDOT Works.

ARTICLE 8. OPERATIONS AND MAINTENANCE

8.1 General

8.1.1 Developer and TxDOT Obligations; Transition of Operations

At all times during the Operating Period, Developer shall carry out the O&M Work in accordance with (a) Good Industry Practice, as it evolves from time to time, (b) the requirements, terms and conditions set forth in the FA Documents (including the Technical Provisions and Technical Documents), as the same may change from time to time, (c) all Laws, (d) the requirements, terms and conditions set forth in all Governmental Approvals, (e) the approved Facility Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and (f) all other applicable safety, environmental and other requirements, taking into account the Facility Right of Way limits and other constraints affecting the Facility. Developer is responsible for keeping itself informed of current Good Industry Practice.

8.1.2 Performance, Operation and Maintenance Standards

8.1.2.1 Developer, at its sole cost and expense unless expressly provided otherwise in this Agreement, shall comply with all Technical Provisions and Technical Documents, including Safety Standards, during the Operating Period.

8.1.2.2 TxDOT shall have the right to adopt at any time, and Developer acknowledges it must comply with all, changes and additions to, and replacements of, Technical Documents and Safety Standards relating to the O&M Work, whether of general application or Discriminatory. Refer to Section 13.2 for Developer's rights to compensation regarding Discriminatory changes and additions to, and replacements of, such Technical Documents or Safety Standards. TxDOT shall provide Developer with prompt written notice of

changes and additions to, and replacements of, such Technical Documents or Safety Standards. Without limiting the foregoing, the Parties anticipate that from time to time after the Effective Date TxDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to O&M Work of general application to Comparable Limited Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. TxDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Book 3 by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed in the Technical Provisions as of the Effective Date, they may, upon inclusion in Book 3, replace and supersede inconsistent provisions of the Technical Provisions to the extent designated by TxDOT in its sole discretion. TxDOT will identify the superseded provisions in its notice to Developer.

8.1.2.3 If compliance with a non-Discriminatory changed, added or replacement Technical Document or Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Facility, Developer shall commence performance of the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of (a) any deadline recommended or prescribed in the changed or added Technical Document or Safety Standard, (b) the date when Developer first performs or (if earlier) is first obligated to perform Renewal Work on such Element or other component and (c) the date TxDOT first applies the change, addition or replacement to any other Comparable Limited Access Highways that TxDOT manages or operates, as determined pursuant to Section 8.1.2.8. If, however, TxDOT adopts the changed, added or replacement Technical Document or Safety Standard prior to the Service Commencement Date for a Facility Segment (other than any Upgrades), in the absence of a TxDOT Change clauses (a) and (c) above shall not apply in determining when Developer must implement the changed, added or replacement Technical Document or Safety Standard with respect to such Facility Segment.

8.1.2.4 If compliance with a non-Discriminatory changed, added or replacement Technical Document or Safety Standard relating to the O&M Work requires construction or installation of new improvements at, for or on the Facility, Developer shall complete construction and installation of the new improvements according to the implementation period recommended or prescribed by the changed, added or replacement Technical Document or Safety Standard. If no such implementation period is recommended or prescribed, Developer shall submit to the Independent Engineer and TxDOT for TxDOT's approval, within 90 days after adoption of the changed, added or replacement Technical Document or Safety Standard, a proposed schedule for completing the new improvements. The proposed schedule shall be reasonable and conform to Good Industry Practice, taking into account the scope, complexity and financial impacts of the work required. Any Dispute regarding the proposed schedule shall be resolved according to the Dispute Resolution Procedures. Developer shall diligently prosecute the Work until completion in accordance with the approved schedule.

8.1.2.5 Developer shall be obligated to implement a Discriminatory changed, added or replacement Technical Document or Safety Standard related to the O&M Work only after TxDOT issues a Change Order or Directive Letter therefor pursuant to

Article 14. If a Discriminatory changed, added or replacement Technical Document or Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Facility during the Operating Period, or requires construction or installation of new improvements, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work according to the schedule therefor adopted in the Change Order for such work. If Discriminatory changed, added or replacement Technical Document or Safety Standard requires implementation not entailing such work, Developer shall implement it from and after the date TxDOT issues the Change Order.

8.1.2.6 Section 12.4 establishes the timing by which Developer must implement Safety Compliance during the Operating Period.

8.1.2.7 In the case of any other changed, added or replacement Technical Document or Safety Standard, Developer shall be obligated to comply from and after the date it becomes effective and Developer is notified or otherwise obtains knowledge of the change or addition. For the avoidance of doubt, Developer shall comply with all changes or additions to such Technical Documents that are in effect and noticed or known to Developer on or prior to the date Developer commences maintenance, routine repair or routine replacement of damaged, worn or obsolete Facility components or materials.

8.1.2.8 For purposes of Section 8.1.2.3(c), a change, addition or replacement shall be deemed to have been first applied by TxDOT if and when TxDOT commences implementing actions on other Comparable Limited Access Highways that TxDOT manages or operates. Developer shall not be entitled to delay commencement or completion of its work on grounds that TxDOT is delayed in commencing or completing implementing actions on Comparable Limited Access Highways where:

(a) TxDOT is delayed due to the extensive system of Comparable Limited Access Highways for which TxDOT is responsible; or

(b) The changed, added or replacement Technical Document or Safety Standard applies only upon the occurrence of a condition or circumstance that has not yet occurred in respect of a Comparable Limited Access Highway that TxDOT manages or operates.

8.1.2.9 New or revised statutes or regulations adopted after the Effective Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to the O&M Work, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than a TxDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

8.1.2.10 Developer may apply for TxDOT approval of Deviations from applicable Technical Provisions or Technical Documents regarding O&M Work. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Facility Management Plan, Developer shall specifically identify and label the Deviation. TxDOT shall consider in its sole discretion, but have no obligation to

approve, any such application, and Developer shall bear the burden of persuading TxDOT that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves TxDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by TxDOT's Authorized Representative. TxDOT's affirmative written approval of a component plan of the Facility Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless TxDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. TxDOT's lack of issuance of a written Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application. TxDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. TxDOT may elect to process the application as a Change Request under Section 14.2 rather than as an application for a Deviation.

8.1.3 Hazardous Materials Management

Without limiting TxDOT's role or responsibilities as set forth in Sections 7.9.3, 7.9.5 and 7.9.7 and except as provided otherwise in Exhibit 11, during the Operating Period, Developer shall manage, treat, handle, store, remediate, remove, transport (where applicable) and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, for which Developer is responsible under Section 7.9, to the extent required by and in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the FA Documents. The provisions of Section 7.9 (except Section 7.9.7 in respect of the period before the TxDOT Substantial Completion Date) and Exhibit 11 shall apply throughout the Operating Period.

8.1.4 Environmental Compliance

Throughout the Operating Period, Developer shall perform or cause to be performed all environmental mitigation measures required under the Environmental Approvals, including the NEPA Approval and similar Governmental Approvals for the Facility (other than in respect of the TxDOT Works prior to the TxDOT Substantial Completion Date), or under the FA Documents, and shall comply with all other conditions and requirements of the Environmental Approvals. Refer to Section 4 of the Technical Provisions for further provisions, requirements and obligations regarding environmental compliance.

8.1.5 Utility Accommodation

8.1.5.1 It is anticipated that during the course of the Operating Period, from time to time Utility Owners will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Facility Right of Way, or to modify, repair, upgrade, relocate or expand existing Utilities within the Facility Right of Way. In such circumstances, the provisions of Section 7.5.8 shall apply, including the application of Section 11.2 to those circumstances where TxDOT is pursuing a Business Opportunity involving a Utility in the Facility Right of Way.

8.1.5.2 Throughout the Operating Period, Developer shall monitor Utilities and Utility Owners within the Facility Right of Way for compliance with applicable utility permits, Utility Joint Use Acknowledgments/Utility Joint Use Agreements, easements, the Utility Accommodation Rules and other applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Facility Right of Way. If (a)

Developer reasonably believes that any Utility Owner is not complying with the terms of a utility permit, Utility Joint Use Acknowledgment/Utility Joint Use Agreement, easement, the Utility Accommodation Rules or other applicable Law affecting a Utility within the Facility Right of Way, or (b) any other dispute arises between Developer and a Utility Owner with respect to a Utility within the Facility Right of Way, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation, Developer shall promptly notify TxDOT, and TxDOT and Developer shall work together in the manner described in Section 7.5.7, including Developer's obligation to reimburse TxDOT for TxDOT's Recoverable Costs in connection with providing assistance to Developer; provided, however, that the "conditions to assistance" (as that term is used in Section 7.5.7) are that Developer shall provide evidence reasonably satisfactory to TxDOT that (i) Developer's position in the dispute is reasonable, (ii) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (iii) the Utility Owner is not cooperating. With respect to the Parties' rights and obligations described in Section 7.5.7.3, for purposes of this Section 8.1.5.2 the conditions to assistance described in clause (i) of the preceding sentence shall be treated in the same manner as those described in Sections 7.5.7.2(a), (b) and (c), and the conditions to assistance described in clauses (ii) and (iii) of the preceding sentence shall be treated in the same manner as those described in Sections 7.5.7.2(d) and (e).

8.1.6 Frontage Roads Access

TxDOT shall be solely responsible, at its expense, for handling requests and permitting for adjacent property access to frontage roads of the Facility. Nothing in the FA Documents shall restrict TxDOT from granting access permits or determining the terms and conditions of such permits. TxDOT will keep Developer regularly informed of access permit applications and will deliver to Developer a copy of each issued access permit within five days after it is issued. TxDOT will follow its standard procedures in connection with the consideration of applications and issuance of such permits. Developer shall have no claim for a Relief Event, Extended Relief Event or Compensation Event by reason of TxDOT's grant of access permits, the terms and conditions thereof, or the actions of permit holders or their employees, agents, representatives and invitees. Developer at its expense shall cooperate and coordinate with permit holders to enable them to safely construct, repair and maintain access improvements allowed under their access permits.

8.1.7 Speed Studies and Speed Limits

8.1.7.1 TxDOT at its expense will conduct a speed study of the Managed Lanes, General Purpose Lanes and Frontage Roads in each Facility Segment between six to eight weeks after the Service Commencement Date for the Facility Segment (to allow time for traffic patterns to stabilize). TxDOT will conduct the speed study in accordance with applicable Law and TxDOT's standards, procedures and methodology applicable to speed studies of frontage roads and main lanes, including those set forth in TxDOT's manual entitled "Procedures for Establishing Speed Zones," as the same may be revised, updated or replaced from time to time (collectively the "TxDOT speed study standards"). TxDOT will work with local governments on ordinances enacting the appropriate posted speeds based on the study. TxDOT will keep Developer informed of study schedules and provide Developer a copy of the study results.

8.1.7.2 Thereafter, in lieu of speed studies by TxDOT, Developer shall have the right and obligation to conduct, at its expense, further speed studies of the Managed Lanes, General Purpose Lanes and Frontage Roads in each Facility Segment. Developer

shall conduct such studies at the three-year intervals provided by applicable Law. In addition, Developer will have the right to conduct a speed study of the Managed Lanes, General Purpose Lanes and Frontage Roads in each Facility Segment earlier than the three-year interval, but in no event sooner than 18 months after completion of the immediately preceding speed study for the same portion of the Managed Lanes, General Purpose Lanes or Frontage Roads, if Developer in good faith believes that significant changes have occurred in the interim that will or may affect posted speed limits. Developer shall conduct the studies according to the TxDOT speed study standards. Each speed study shall be subject to TxDOT approval to verify compliance with the TxDOT speed study standards. TxDOT at its expense will process each such approved speed study, including working with local governments as described above. TxDOT will coordinate such processing with Developer where Developer also desires to work with local governments on speed ordinances.

8.1.7.3 Nothing in the FA Documents authorizes Developer to adjust posted speed limits on the Managed Lanes, General Purpose Lanes, Frontage Roads or other lanes of the Facility, except temporary reductions during construction with TxDOT's prior written approval, as set forth in Section 18.3.1 of the Technical Provisions. Such authority is reserved solely to TxDOT and applicable Governmental Entities.

8.1.7.4 The requirements for speed studies set forth in this Section shall be in addition to the monitoring for compliance with the minimum speed requirements established for Managed Lanes pursuant to Exhibit 4.

8.1.8 Updates of Record Drawings

Within 30 days after undertaking any O&M Work that results in a significant change to the Facility, Developer shall update the Record Drawings to reflect such change.

8.2 O&M Contracts

8.2.1 If Developer elects not to self-perform any aspect of the operations and maintenance of the Facility, including toll operations, it shall enter into an O&M Contract for such O&M Work. Each O&M Contract will be a Principal Facility Document.

8.2.2 Each O&M Contractor, if any, shall have the expertise, qualifications, experience, competence, skills and know-how to perform the O&M Work and related obligations of Developer in accordance with this Agreement.

8.3 Transition of Operations and Maintenance Responsibilities

8.3.1 TxDOT will be responsible for operation and maintenance for the Facility or portion thereof until the applicable date described in Section 8.3.2. During the period TxDOT retains operation and maintenance responsibility for the Facility, TxDOT shall maintain the Facility or applicable portion thereof in accordance with current TxDOT maintenance standards and conduct traffic management activities in accordance with TxDOT's standard traffic management practices and procedures.

8.3.2 Subject to Section 7.8.5.2, upon the Operating Commencement Date for a Facility Segment or a Capacity Improvement or any earlier opening to traffic of a completed portion of a Facility Segment pursuant to Section 7.8.5.2, Developer shall assume full responsibility for operation and maintenance for the Facility Segment, Capacity Improvement or

such portion, as applicable, and shall keep all General Purpose Lanes and the Frontage Roads open for normal and continuous operations and use by the traveling public, except to the extent provided in the TxDOT-approved Traffic Management Plan.

8.3.3 The Parties shall carry out transition of operation and maintenance responsibilities in accordance with the Traffic Management Plan and other applicable portions of the Facility Management Plan.

8.4 Oversight, Inspection and Testing; Meetings

8.4.1 By Independent Engineer

The Independent Engineer will perform oversight, inspection, testing and auditing respecting the O&M Work in accordance with Section 9.3 and the Independent Engineer Joint Work Authorization.

8.4.2 By TxDOT

TxDOT's rights of oversight, inspection, testing and auditing with respect to the O&M Work are set forth in Sections 9.3 and 22.2.

8.4.3 Inspections

During the Operating Period, Developer shall carry out inspections in accordance with the Maintenance Management Plan. Developer shall use the results of inspections to develop and update the Renewal Work Schedule, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users.

8.4.4 Meetings

8.4.4.1 At TxDOT's request, Developer shall conduct regular quarterly meetings with TxDOT during the Operating Period. At TxDOT's request, Developer will require each O&M Contractor, if any, to attend the quarterly meetings and any other meetings concerning matters pertaining to the O&M Contractor, its work or the coordination of its work with other Contractors. Such meetings shall be in addition to any meetings required by Section 7.11.3 during the Operating Period.

8.4.4.2 In addition, TxDOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the O&M Work or Facility.

8.4.4.3 Developer shall schedule all meetings with TxDOT at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide TxDOT with written notice and a meeting agenda at least three Business Days in advance of each meeting.

8.5 Renewal Work

8.5.1 The Performance Requirements for the Elements of the Facility are set forth in the Performance and Measurement Table Baseline and related provisions of the Technical

Provisions. Developer shall diligently perform Renewal Work (other than any Renewal Work which constitutes repairs of TxDOT Works Defects during the TxDOT Warranty Period) as and when necessary to maintain compliance with such Performance Requirements. Developer also shall perform such Renewal Work according to the other applicable terms of the Technical Provisions, including, when applicable, the Handback Requirements. Developer shall use the Renewal Work Schedule, as updated from time to time, as the principal guide for scheduling and performing Renewal Work.

8.5.2 Not later than 90 days after the end of each calendar year, Developer shall deliver to TxDOT and the Independent Engineer a written report of the Renewal Work performed by Developer in the immediately preceding calendar year. The report shall describe by location, Element as listed in the Renewal Work Schedule and other component the type of work performed, the dates of commencement and completion and the cost, as well as the total cost of all Renewal Work performed during the calendar year. During the period the Handback Requirements Reserve is in effect, the report also shall set forth the total draws from the Handback Requirements Reserve in the immediately preceding calendar year and the date, amount and use of each draw (including any use for Safety Compliance work).

8.6 Renewal Work Schedule

8.6.1 Not later than 90 days before the first Service Commencement Date to occur, Developer shall prepare (in consultation with TxDOT in connection with such portions of the Facility constituting TxDOT Works) and submit to the Independent Engineer and TxDOT for their review and comment a Renewal Work Schedule. Using the results of its Facility inspections under Sections 19.1 and 19.2 of the Technical Provisions, Developer shall set forth in the Renewal Work Schedule, by Element, (a) the estimated Useful Life, (b) the estimated Residual Life, (c) a brief description of the type of Renewal Work anticipated to be performed at the end of the Element's Residual Life, (d) a brief description of any Renewal Work anticipated to be performed before the end of the Element's Residual Life, including reasons why this work should be performed at the proposed time, (e) the estimated cost of such Renewal Work and (f) the total estimated cost of Renewal Work in each of the years Renewal Work is anticipated to be performed under the Renewal Work Schedule.

8.6.2 Developer shall estimate the Useful Life of each Element within the Renewal Work Schedule based on (a) Developer's reasonable expectations respecting the manner of use, levels of traffic, and wear and tear and (b) the assumption that, when subject to routine maintenance of a type which is normally included as an annually recurring cost in highway maintenance and repair budgets, the Element will comply throughout its Useful Life with each applicable Performance Requirement. Developer shall estimate the Residual Life of each Element within the Renewal Work Schedule based on its Age and whether (i) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer (ii) Developer has performed the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, and (iii) the Element has complied throughout its Age with each applicable Performance Requirement.

8.6.3 Not later than 90 days before the beginning of each calendar year thereafter, Developer shall prepare and submit to the Independent Engineer and TxDOT for their review and comment either (a) a revised Renewal Work Schedule or (b) the then-existing Renewal Work Schedule accompanied by a statement that Developer intends to continue in effect the then-existing Renewal Work Schedule without revision (in either case, referred to as the

“updated Renewal Work Schedule”). Developer shall make revisions as reasonably indicated by experience and then-existing conditions respecting the Facility, the factors described in Section 8.6.2, changes in estimated costs of Renewal Work, changes in technology, changes in Developer’s planned means and methods of performing Renewal Work, and other relevant factors. The updated Renewal Work Schedule shall show the revisions, if any, to the prior Renewal Work Schedule and include an explanation of reasons for revisions. If no revisions are proposed, Developer shall include an explanation of the reasons no revisions are necessary. During the period the Handback Requirements Reserve is in effect, the updated Renewal Work Schedule also shall set forth, by Element, Developer’s planned draws from the Handback Requirements Reserve during the forthcoming calendar year.

8.6.4 At TxDOT’s or the Independent Engineer’s request, Developer and its O&M Contractor(s), if any, shall promptly meet and confer with TxDOT or the Independent Engineer to review and discuss the original or updated Renewal Work Schedule.

8.6.5 The Independent Engineer’s duties shall include delivering to TxDOT and Developer, within 30 days after receipt of the original and each updated Renewal Work Schedule, comments, objections and recommendations with respect thereto. Within 30 days after receiving such comments, objections and recommendations, TxDOT shall have the right to object to or disapprove the original or updated Renewal Work Schedule or any elements thereof. In addition to the grounds for disapproval set forth in Section 6.3.7.1, comments, objections and disapprovals by the Independent Engineer or TxDOT shall be based on whether the original or updated Renewal Work Schedule and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Facility experience and condition, applicable Technical Provisions, Governmental Approvals, and Laws.

8.6.6 Within 30 days after receiving written notice of comments, objections, recommendations and disapprovals from the Independent Engineer or TxDOT, Developer shall submit to TxDOT and the Independent Engineer a revised original or updated Renewal Work Schedule rectifying such matters and, for matters it disagrees with, a written notice setting forth those comments, objections, recommendations and disapprovals that Developer disputes, which notice shall give details of Developer’s grounds for dispute. If Developer fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and recommendations and the original or updated Renewal Work Schedule, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections. After timely delivery of any such notice, Developer and TxDOT shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Developer delivers its notice, either Party may refer the Dispute to the Disputes Resolution Procedures for determination. The comments, objections, recommendations and disapprovals of the Independent Engineer shall receive substantial weight in resolving the Dispute.

8.6.7 Until resolution of any portion of the original or updated Renewal Work Schedule that is in Dispute, the treatment of that portion in the immediately preceding Renewal Work Schedule shall remain in effect and govern.

8.7 Toll Handling, Collection and Enforcement

8.7.1 Commencing on the Service Commencement Date for each Facility Segment and continuing throughout the Term, Developer shall be responsible for toll collection, violation processing, enforcement, revenue handling and accounting, and customer service and support

for the Managed Lanes. Developer shall conduct its violation processing and enforcement activities in compliance with applicable Laws. If Developer retains a public agency to perform toll violation processing and enforcement, the Laws applicable to such agency's violation processing and enforcement activities, including those pertaining to fees, costs and penalties it may charge to Users, shall apply.

8.7.2 Commencing on the Service Commencement Date for each Facility Segment and continuing throughout the Term, Developer shall provide all Electronic Toll Collection Systems and related services for the Managed Lanes in accordance with the requirements set forth in Section 21 of the Technical Provisions. Commencing on the Service Commencement Date for each Facility Segment and continuing throughout the Term, Developer shall maintain and operate an Electronic Toll Collection System for the Managed Lanes. Such Electronic Toll Collection System and any transponders Developer or its Affiliate issues shall meet all applicable TxDOT statewide and interstate interoperability and compatibility standards, requirements and protocols, if any, including any pertaining to any clearinghouse system TxDOT participates in, implements or operates. Interoperability is required as to (a) functionality, enabling use of a single transponder across all highways, (b) customer account maintenance, management and reconciliation, and (c) funds transfers among all participants, enabling a customer to have a single transponder to pay for tolled travel on all highways.

8.7.3 If TxDOT is a party to any agreement or memorandum of understanding with any other public agency or private party operating tolled highway facilities within or outside the State for interoperability with TxDOT's electronic toll collection system, then Developer's Electronic Toll Collection System also shall be interoperable with the electronic toll collection system and violation enforcement system and protocols utilized or to be utilized on such other highway facilities, to the extent such systems and protocols are in common with or substantially similar to TxDOT's. TxDOT will promptly provide to Developer a copy of any such agreement or memorandum of understanding.

8.7.4 If prior to commencement of toll operations TxDOT has in place statewide or interstate interoperability and compatibility standards, requirements and protocols for electronic tolling, then Developer shall demonstrate or cause to be demonstrated interoperability of its Electronic Toll Collection System prior to commencement of the toll operations. Developer shall make such demonstration by submitting to TxDOT and the Independent Engineer test results from a qualified testing facility, verifying compliance with the interoperability standards described in Sections 8.7.2 and 8.7.3, and by reasonable field verification and testing in compliance with Good Industry Practice.

8.7.5 Developer and TxDOT entered into the TxDOT Tolling Services Agreement at or prior to Financial Close and an amendment thereto on or prior to the Amendment Effective Date. In the event that subsequent to the Amendment Effective Date Developer is able to reach agreement with the NTTA regarding (i) a direct agreement between NTTA and Developer for customer service and other toll collection and enforcement services for the Facility, and (ii) the agreement between Developer and NTTA for tolling services shall have been executed, the TxDOT Tolling Services Agreement shall cease to be in full force and effect immediately upon such execution; provided that any such agreement between Developer and NTTA shall be subject to TxDOT's prior written consent and Developer shall not enter into such an agreement with NTTA unless there is no uncured material default by NTTA under the tolling services agreement between TxDOT and NTTA. Concurrently with entering into the TxDOT Tolling Services Agreement, TxDOT entered into a tolling services agreement with NTTA (the "NTTA Tolling Services Agreement") to retain NTTA as TxDOT's subcontractor to perform such

customer service and other toll collection and enforcement services for the Facility as provided in such agreement. Except as provided otherwise in Section 17.5.1.1, no default or failure to perform by either Party under the TxDOT Tolling Services Agreement or any related agreement shall constitute a default by such Party under the FA Documents. In the event the TxDOT Tolling Services Agreement is terminated prior to expiration of the term or the earlier the termination of this Agreement, any agreement between Developer and a replacement service provider shall be subject to TxDOT's review for compliance with this Agreement and shall comply with applicable Law.

8.7.6 [RESERVED.]

8.7.7 [RESERVED.]

8.7.8 [RESERVED.]

8.7.9 [RESERVED.]

8.7.10 The following provisions shall apply only during any portion of the period commencing on the first Service Commencement Date and ending at the end of the Term (an "applicable period") in which (a) Transportation Code, Section 228.055, as the same may be amended from time to time, or any statute of similar import ("Section 228.055"), is in effect, (b) Developer lacks statutory authority comparable to that available to TxDOT under Section 228.055 and (c) Developer has no agreement in effect for customer services and other toll collection and enforcement services for the Facility with TxDOT or a Governmental Entity that has statutory authority under or comparable to that under Section 228.055 (which is deemed to include NTTA), or Developer has such an agreement in effect but is exercising rights to step in or intervene in performance of such agreement and is using a service provider lacking such statutory authority. If any Transaction occurring during an applicable period remains in processing, enforcement and collection after the applicable period as a Video Transaction (a "tail period Video Transaction"), the following provisions also apply to the tail period Transactions for a period up to but not exceeding one year after the end of the applicable period (the "tail period").

8.7.10.1 TxDOT appoints Developer as TxDOT's agent during the applicable period, and during the tail period as to tail period Video Transactions, for the sole and limited purpose of (a) delivering notices of nonpayment to Video Transaction Users under Section 228.055, (b) imposing an administrative fee under Section 228.055, (c) using and approving automated enforcement technology under Section 228.058, (d) pursuing any misdemeanor offenses against Video Transaction Users under Section 228.055, and (e) instructing all courts and public officials to deliver all tolls and Incidental Charges, including administrative fees, recovered under Section 228.055 with respect to Video Transactions to the trustee under the Facility Trust Agreement for deposit into the Toll Revenue Account. Such appointment shall be exclusive and irrevocable during the applicable period, and during the tail period as to tail period Video Transactions, provided that such appointment is deemed automatically suspended during any period that TxDOT exercises step-in rights under Section 17.3.4 involving TxDOT's performance of toll operations, and except for tail period Video Transactions is deemed automatically revoked upon termination of this Agreement.

8.7.10.2 At Developer's request, TxDOT shall cooperate with Developer in connection with (a) confirming in writing to courts and public officials Developer's authority as TxDOT's agent under Section 8.7.10.1, and (b) any proceedings Developer initiates under

Section 228.055. At Developer's request, TxDOT will deliver instructions to such public officials and courts as reasonably necessary for them to deliver tolls and Incidental Charges, including administrative fees, recovered under Section 228.055 with respect to Video Transactions to the trustee under the Facility Trust Agreement for deposit into the Toll Revenue Account. Developer shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, it incurs in connection with such cooperation.

8.7.10.3 TxDOT will promptly deliver to Developer a copy of all notices, other communications and documentation from Video Transaction Users that TxDOT receives in response to notices of violation Developer issues under Section 228.055; provided that TxDOT shall have no liability to Developer for compensation or other damages if it does not promptly deliver such notices, communications or documentation.

8.7.10.4 If any court or public official remits to TxDOT any tolls or Incidental Charges collected via proceedings brought under Section 228.055, or if any Video Transaction User in response to or settlement of a violation notice or any such proceeding remits to TxDOT any such tolls or Incidental Charges, then the amounts so remitted to TxDOT shall constitute Developer's property, shall be deemed received by TxDOT merely as a bailee or agent, and shall not constitute funds or property of TxDOT or the State; and TxDOT shall forthwith remit such payments to the trustee under the Facility Trust Agreement for deposit into the Toll Revenue Account.

8.7.11 For the sole purpose of enabling processing and collection of Transactions, so long as it is authorized under Transportation Code, Section 730.007(a)(2)(J), as the same may be amended from time to time, or any other statute of similar import, TxDOT will cause the Texas Department of Motor Vehicles to (a) provide Developer with electronic access to all vehicle registration records and information maintained by the Texas Department of Motor Vehicles, and (b) provide Developer with the same access that TxDOT has to vehicle registration records and information for vehicles that are not registered in Texas. The foregoing rights of access shall survive until 90 days after expiration or earlier termination of the Term solely for the purpose of processing and collecting Transactions occurring during the Term. As conditions to receiving access to such records and information, Developer shall (i) submit any request form and enter into any form agreement that the Texas Department of Motor Vehicles may require for obtaining access and (ii) pay all fees, costs and charges that the Texas Department of Motor Vehicles customarily imposes from time to time for providing access. Developer acknowledges that all such records and information constitute Patron Confidential Information subject to Section 8.8.

8.8 User Privacy

8.8.1 Developer shall provide an Electronic Toll Collection System and procedures designed to maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices. In addition, unless otherwise approved in writing by TxDOT, if Developer, its Affiliate or any private entity under Contract with Developer to provide customer service and other toll collection and enforcement services issues transponders and manages transponder customer accounts, Developer shall provide, and cause its Affiliate or such private entity Contractor to provide, to such customers who request it, as an option, anonymous accounts and/or other techniques that enhance motorists' privacy, consistent with applicable Laws. Developer shall not, however, be required to maintain account anonymity when providing information as necessary to others to process tolls for Video Transactions or toll violations or attempting to resolve customer disputes

regarding toll charges, or when the intrinsic nature of the technology requires establishment of customer identity (e.g. cellular telephones), provided customers requesting anonymity are clearly advised of the circumstances under which Developer, its Affiliate or such private entity Contractor is not required to maintain account anonymity.

8.8.2 Developer acknowledges that the data generated by, or accumulated or collected in connection with, operation of Developer's Electronic Toll Collection System or Developer's toll collection and enforcement activities, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Facility and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("Patron Confidential Information"). Patron Confidential Information includes names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, vehicle registration information, medical data, law enforcement records, agency Source Code or object code, agency security data, or other information that relates to any of these types of information.

8.8.3 Developer shall comply with all applicable Laws, Technical Provisions and TxDOT statewide and interstate interoperability and compatibility standards, requirements and protocols limiting, restricting or pertaining to collection, use, confidentiality, privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information.

8.8.4 Developer agrees to hold Patron Confidential Information in strictest confidence and not to make use of Patron Confidential Information for any purpose other than the performance of this Agreement, including toll violation processing and collection. Developer shall release Patron Confidential Information only to (a) TxDOT if requested, (b) the Independent Engineer if requested in connection with its auditing functions, (c) authorized employees or Contractors requiring such information for the purpose of carrying out obligations under this Agreement, (d) authorized collection agencies as necessary to assist their collection of toll violations, (e) the Texas Department of Public Safety as necessary to assist its enforcement of toll violation traffic infractions, and (f) any Lender or Substituted Entity that succeeds to Developer's Interest. Developer shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information, or otherwise make it known, to any other Person without TxDOT's express prior written consent in its sole discretion except as required by applicable Laws. Developer may provide such information and material only to employees of Developer-Related Entities who have signed a nondisclosure agreement, the terms of which have been previously approved by TxDOT in its good faith discretion. Developer agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to Patron Confidential Information and to implement destruction of records containing Patron Confidential Information in accordance with the records retention provisions of the Technical Provisions and Technical Documents. Developer shall maintain all Patron Confidential Information solely in the State.

8.8.5 Immediately upon expiration or termination of this Agreement, Developer shall, at TxDOT's option, (a) certify to TxDOT that Developer has destroyed all Patron Confidential Information, (b) return all Patron Confidential Information to TxDOT or (c) take whatever other steps TxDOT reasonably requires of Developer to protect Patron Confidential Information. This provision shall not apply to Patron Confidential Information needed to bill, enforce and collect a

Video Transaction occurring prior to expiration or termination of this Agreement until the earlier of (i) payment of the applicable tolls or (ii) one year after the date the Video Transaction occurs.

8.8.6 Developer shall describe in the Operations Management Plan or operating manual or procedures prepared thereunder (a) the Patron Confidential Information received in the performance of this Agreement, (b) the purpose(s) for which the Patron Confidential Information is received, (c) who receives, maintains and uses the Patron Confidential Information and (d) the final disposition of the Patron Confidential Information.

8.8.7 The rights of TxDOT and the Independent Engineer to audit and inspect under this Agreement shall include the right to monitor, audit and investigate Developer's books and records and Developer's systems, practices and procedures concerning Patron Confidential Information. If the Independent Engineer requests access to Patron Confidential Information, Developer may require the Independent Engineer to execute and deliver an appropriate confidentiality agreement consistent with the provisions of this Section 8.8.

8.8.8 Developer shall disclose in writing to each User for whom Developer holds Patron Confidential Information Developer's policies regarding privacy of Patron Confidential Information, consistent with this Section 8.8. For each User having an account with Developer or its Affiliate for automatic payment of tolls, Developer shall deliver such written disclosure within 30 days after any User first opens the account. In addition, for all Users, Developer shall maintain such disclosure on the Facility web site. Developer shall comply with the provisions of any applicable Law prescribing disclosure of Developer's privacy policies, including provisions on the content of disclosures and when disclosure must be given, as deemed compliance with the disclosure requirements of this Section 8.8.8. Provided that the TxDOT Tolling Services Agreement is not in effect, the content of the form of disclosure, and any changes thereto that Developer may make from time to time, shall be subject to TxDOT's prior written approval.

8.8.9 In the event Developer retains any Governmental Entity to provide customer service and other toll collection and enforcement services, Developer shall have no obligation or liability regarding such Governmental Entity's handling of Patron Confidential Information. Developer shall, however, use commercially reasonable efforts to include in its Contract with such Governmental Entity covenants by the Governmental Entity comparable to those in this Section 8.8, other than the anonymous account provisions.

8.9 Policing, Security and Incident Response

8.9.1 Police Services

8.9.1.1 Developer, without expense to TxDOT, shall permit the Texas Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services in accordance with applicable Laws and agreements with State and local agencies, including permitting at least the type and level of service that the Texas Department of Public Safety provides on Comparable Limited Access Highways owned and operated by TxDOT. In addition, Developer, without expense to TxDOT, shall engage, on mutually acceptable reasonable terms and conditions, either the Texas Department of Public Safety or another qualified public law enforcement agency with jurisdiction to provide enhanced levels of traffic patrol, traffic law enforcement services, special traffic operations services, accident assistance and investigation, and other enhanced police and Emergency services as needed due to any

Developer-Related Entity's construction, operation, maintenance or other activities on or affecting the Facility.

8.9.1.2 Developer shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Facility unless otherwise approved by TxDOT in its sole discretion. Notwithstanding the foregoing, Developer may engage private security firms or employ passive security devices or technology to protect, collect, accumulate, transfer and deposit tolls and Incidental Charges or to identify toll violators; provided, however, that services to physically apprehend toll violators may be performed only by the Texas Department of Public Safety unless otherwise approved in writing by TxDOT in its sole discretion. In providing such policing services through a private security firm, Developer shall comply and cause the firm to comply with applicable Laws, including the regulations of the Texas Department of Public Safety. The foregoing does not in any way limit Developer's enforcement of private rights and civil remedies respecting toll violations.

8.9.1.3 At Developer's request and expense, TxDOT shall assist Developer in securing the agreement of the Texas Department of Public Safety to perform enhanced services. Such assistance may include accompanying Developer to meetings with the Texas Department of Public Safety, requesting the involvement of the director of TxDOT and taking any other reasonable action within its powers.

8.9.1.4 Nothing in this Section 8.9.1 shall be construed as conferring upon TxDOT in any way responsibility for funding policing services.

8.9.1.5 Developer acknowledges that the Texas Department of Public Safety is empowered to enforce all applicable Laws and to enter the Facility at any and all times to carry out its law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of the Texas Department of Public Safety or any other Governmental Entity, and all such police powers are hereby expressly reserved.

8.9.1.6 TxDOT shall not have any liability or obligation to Developer resulting from, arising out of or relating to the failure of the Texas Department of Public Safety or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

8.9.1.7 TxDOT and third parties with responsibility for traffic regulation and enforcement shall have the right to install, operate, maintain and replace cameras or other equipment on the Facility that relate to traffic regulation or enforcement. Developer, at its expense, shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with any such installation, maintenance and replacement activities.

8.9.2 Security and Incident Response

8.9.2.1 Developer is responsible for the safety and security of the Facility (other than any areas which constitute part of, or relate to, the TxDOT Works prior to the TxDOT Substantial Completion Date) and the workers and public thereon during all construction, operation and maintenance activities under the control of any Developer-Related Entity.

8.9.2.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services. Without limiting the foregoing, whenever the National Terrorism Advisory System (NTAS) or successor system has issued an “elevated” or “imminent” alert or comparable level of threat or alert for any region in which the Facility is located or which the Facility serves, Developer, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region. Developer shall provide such service 24 hours a day, seven days a week, until such level or threat or alert expires pursuant to its “sunset period” or is cancelled, or until the lead agency at the operations center determines such staffing level is no longer necessary.

8.9.2.3 Developer shall perform and comply with the provisions of the Technical Provisions concerning Incident response, safety and security.

8.9.2.4 Developer shall implement all Incident response, safety and security procedures, protocols and requirements set forth in the Incident Management Plan (a component of the Facility Management Plan).

8.10 Handback Requirements

8.10.1 Handback Condition; Developer Option

8.10.1.1 Subject to Sections 8.10.1.2 and 8.10.3.2, on the Termination Date Developer shall transfer the Facility, including all Upgrades, to TxDOT, at no charge to TxDOT, in the condition and meeting all of the requirements for Residual Life at Handback specified in the Handback Requirements.

8.10.1.2 For each Element of the Facility with a Required Residual Life equal to or less than 20 years and that has a Residual Life that is less than the Required Residual Life, Developer shall have the option, in lieu of performing the Work necessary to ensure that the Residual Life at Handback of the Element equals or exceeds the Required Residual Life for the Element, to pay for Developer’s pro-rata share of future Renewal Work that will be necessary for TxDOT to perform after the end of the Term. Developer shall pay such amount by making the deposits in the Handback Requirements Reserve in accordance with Section 2(a) of Exhibit 12, for transfer and release to TxDOT at the end of the Term under Section 8.11.4.1. Developer shall deliver written notice to TxDOT prior to the first day of the fifth full calendar year before the end of the Term setting forth its election for each applicable Element of the Facility. Failure by the Developer to deliver such written notice to TxDOT by such deadline or failure of the Developer to include any Element in the written notice shall be deemed an election by Developer to perform all Work necessary to ensure that the Residual Life at Handback of the Element meets or exceeds the Required Residual Life for the Element.

8.10.2 Handback Inspections

The Parties shall conduct inspections of the Facility at the times and according to the terms and procedures specified in the Handback Requirements and the approved Handback Plan pursuant to Section 19.3 of the Technical Provisions for the purposes of (a) determining and verifying the condition of all Elements and their Residual Lives, (b) adjusting, to the extent necessary based on inspection and analysis, Element Useful Lives, Ages, Residual Lives,

estimated costs of Renewal Work and timing of Renewal Work, (c) revising and updating the Renewal Work Schedule to incorporate such adjustments, (d) determining the Renewal Work required to be performed and completed prior to reversion of the Facility to TxDOT, based on (i) the requirements for Residual Life at Handback specified in the Handback Requirements and Section 8.10.1, (ii) the foregoing adjustments and (iii) the foregoing changes to the Renewal Work Schedule, (e) verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements, and (f) adjusting Developer's funding of the Handback Requirements Reserve so that it is funded according to the schedule and amounts required under Exhibit 12. Developer shall reimburse TxDOT all TxDOT's Recoverable Costs and other fees, costs and expenses TxDOT incurs in connection with such Residual Life Inspections.

8.10.3 Renewal Work under Handback Requirements

Developer shall diligently perform and complete all Renewal Work required to be performed and completed prior to reversion of the Facility to TxDOT, based on the required adjustments and changes to the Renewal Work Schedule resulting from the inspections and analysis under the Handback Requirements. Developer shall complete all such work:

8.10.3.1 Prior to the Termination Date, if transfer of the Facility is to occur at the expiration of the full Term; or

8.10.3.2 As close as possible to the Early Termination Date. If Developer, despite diligent efforts, is unable to complete such work prior to the Early Termination Date, then in lieu of completion of such work any applicable measure of Termination Compensation based on (a) Fair Market Value shall take into consideration such non-completion as provided in Section B.5(e) of Exhibit 20 and (b) other than Fair Market Value shall be adjusted as provided in Section B.4(f) and comparable provisions of Exhibit 20.

8.11 Handback Requirements Reserve

8.11.1 Establishment

8.11.1.1 On or before the last day of the first calendar quarter of the fifth full calendar year before the end of the Term, Developer shall establish and fund a reserve account (the "Handback Requirements Reserve") exclusively available for the uses set forth in Section 8.11.3. The Handback Requirements Reserve shall be established under the Facility Trust Agreement or other similar arrangements that, to the maximum extent practicable, preclude it from being an asset of Developer or TxDOT, so that it will be available to TxDOT or Lenders (subject to Section 4.3.8) regardless of any bankruptcy event. Such other arrangements shall be subject to TxDOT's and Developer's prior written approval each in its good faith discretion. If such arrangements are not pursuant to the Facility Trust Agreement, then such arrangements shall include the holding of the Handback Requirements Reserve in an account with a financial institution nominated by Developer and approved by TxDOT, which institution may include any Lender that is and continues to qualify as an Institutional Lender.

8.11.1.2 Developer shall provide to TxDOT the details regarding the account, including the name, address and contact information for the depository institution and the account number. Developer shall inform the depository institution of all TxDOT's rights and interests with respect to the Handback Requirements Reserve, including TxDOT's right to draw on the Handback Requirements Reserve as provided in Section 17.3.7. Developer shall

deliver such notices to the depository institution and execute such documents as may be required to establish and perfect TxDOT's interest in the Handback Requirements Reserve under the Uniform Commercial Code as adopted in the State, including TxDOT's right to make direct draws against the Handback Requirements Reserve as provided in Section 17.3.7.

8.11.1.3 In lieu of establishing the Handback Requirements Reserve, Developer may deliver to TxDOT a Handback Requirements Letters of Credit, on the terms and conditions set forth in Section 8.11.5.

8.11.2 Funding

8.11.2.1 Developer shall make deposits to the Handback Requirements Reserve at the times and in the amounts set forth in Exhibit 12.

8.11.2.2 Funds held in the Handback Requirements Reserve may be invested and reinvested only in Eligible Investments. Eligible Investments in the Handback Requirements Reserve must mature, or the principal of and accrued interest on such Eligible Investments must be available for withdrawal without penalty, not later than such times as shall be necessary to provide funds when needed for payment of draws to Developer, and in any event not later than the end of the Term. All interest earned or profits realized from the investment of funds in the Handback Requirements Reserve shall be retained therein.

8.11.3 Use

8.11.3.1 Developer will have the right to payments from the Handback Requirements Reserve to be used only for the following purposes, provided the Handback Requirements Reserve is not at any time reduced below the amount of funds then required under Exhibit 12:

(a) Costs of Renewal Work performed prior to the end of the Term pursuant to Section 8.5 in order to deliver Elements with Residual Lives at Handback that meet the Required Residual Lives, except with respect to the Elements for which Developer exercises its option pursuant to Section 8.10.1.2; and

(b) Costs of Safety Compliance work.

8.11.3.2 Not later than five years before the end of the Term, the Parties shall establish reasonable written protocols and procedures for requesting and funding draws from the Handback Requirements Reserve.

8.11.4 Disposition at End of Term

8.11.4.1 At the expiration or any earlier termination of the Term for any reason, including termination due to TxDOT Default, all funds in the Handback Requirements Reserve (except as provided in Section 8.11.4.2) shall automatically be and become the sole property of TxDOT, free and clear of all liens, pledges and encumbrances. Thereupon, Developer shall deliver such transfers, assignments and other documents, and take such other actions, as TxDOT or the depository institution for the Handback Requirements Reserve shall require to confirm transfer to TxDOT of the Handback Requirements Reserve and funds therein, free and clear of all liens, pledges and encumbrances.

8.11.4.2 In the event the Handback Requirements Reserve at such time is different from the amount then required pursuant to Exhibit 12, Developer shall be obligated to pay any shortfall to TxDOT upon demand, or TxDOT shall authorize release to Developer of any excess, as the case may be. TxDOT at its election may offset any Termination Compensation owing to Developer by the amount of the Handback Requirements Reserve owing to TxDOT. TxDOT at its election also may offset any excess to be released to Developer by any amount Developer still owes TxDOT for the cost of the inspections conducted pursuant to the Handback Requirements. For the avoidance of doubt, if at the expiration of the Term Developer has completed and paid in full all Renewal Work required on all Elements other than Elements for which the Developer has exercised its option pursuant to Section 8.10.1.2 and funds in the Handback Requirements Reserve exceed the total amount required under Section 2(a) of Exhibit 12 and the 10% contingency thereon required under Section 2(c) of Exhibit 12, then TxDOT shall authorize release of such excess to Developer or, at Developer's direction, the Collateral Agent, subject to the foregoing offset rights.

8.11.5 Handback Requirements Letters of Credit

8.11.5.1 In lieu of establishing the Handback Requirements Reserve, Developer may deliver to TxDOT one or more letters of credit (each, a "Handback Requirements Letter of Credit"), on the terms and conditions set forth in this Section 8.11.5 and Section 16.3. If the Handback Requirements Reserve has been previously established, Developer at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve, on the terms and conditions set forth in this Section 8.11.5 and Section 16.3. Upon receipt of the required substitute Handback Requirements Letter of Credit, TxDOT shall authorize the release to Developer of amounts in the Handback Requirements Reserve equal to the face amount of the substitute Handback Requirements Letter of Credit, such released funds to be applied as set forth in Section 3.5.2. If the face amount of any Handback Requirements Letter of Credit falls below the total amount required to be funded to the Handback Requirements Reserve prior to expiry of the Handback Requirements Letter of Credit, Developer shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve. Alternately, Developer may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the Handback Requirements Reserve during the period up to the expiry of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve are due.

8.11.5.2 At the beginning of each year, Developer shall have the right and obligation (in lieu of funding the Handback Requirements Reserve) to adjust the amount of the Handback Requirements Letter of Credit to equal the maximum amount required to be funded in the Handback Requirements Reserve during the forthcoming year under Exhibit 12, taking into account the most recent Renewal Work Schedule and Renewal Work performed to date under the Handback Requirements.

8.11.5.3 The Handback Requirements Letter(s) of Credit last issued before the end of the Term shall have an expiration date not earlier than 90 days after the end of the Term.

8.11.5.4 TxDOT shall have the right to draw on the Handback Requirements Letter of Credit (a) as provided in Section 16.3.1.2 or (b) upon or after expiration

or earlier termination of the Term for any reason, including termination due to TxDOT Default, as necessary to obtain the Handback Requirements Reserve funds to which TxDOT is then entitled under Section 8.11.4.

8.11.5.5 If TxDOT draws on the Handback Requirements Letter of Credit due to Developer's failure for any reason to deliver to TxDOT a new or replacement Handback Requirements Letter of Credit, on the same terms, or at least a one year extension of the expiration date of the existing Handback Requirements Letter of Credit, not later than 45 days before such expiration date, TxDOT shall deposit the proceeds from drawing on the expiring Handback Requirements Letter of Credit into the Handback Requirements Reserve.

ARTICLE 9. MANAGEMENT SYSTEMS AND OVERSIGHT

9.1 Facility Management Plan

9.1.1 Developer is responsible for all quality assurance and quality control activities necessary to manage the Work, including the Utility Adjustment Work (other than for any Utility Adjustment work included in the TxDOT Works). Developer shall undertake all aspects of quality assurance and quality control for the Facility (other than for the TxDOT Works prior to TxDOT Substantial Completion) and Work in accordance with the approved Facility Management Plan and Good Industry Practice. For the avoidance of doubt, the Facility Management Plan will not include the TxDOT Works prior to TxDOT Substantial Completion.

9.1.2 Developer shall develop the Facility Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in Section 2 of the Technical Provisions and Good Industry Practice. Developer shall consult with TxDOT to develop such portions of the Facility Management Plan which relate to the operation and maintenance of the TxDOT Works.

9.1.3 Developer shall submit to TxDOT for approval in its good faith discretion in accordance with the procedures described in Section 6.3 of this Agreement and the time line set forth in Attachment 2-1 to the Technical Provisions each component part, plan and other documentation of the Facility Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. Each component part, plan and other documentation of the Facility Management Plan and each proposed change or addition to or revision of any such component part, plan or other documentation shall constitute a separate Submittal for purposes of Section 6.3. TxDOT shall have a period of 30 Days to review initial WBS and Facility Baseline Schedule Submittals and 21 Days to review resubmissions as set forth in Section 2.1.1 of the Technical Provisions. TxDOT may propose any change required to comply with Good Industry Practice or to reflect a change in working practice to be implemented by Developer.

9.1.4 Developer shall not commence or permit the commencement of any aspect of the design, construction, tolling, operation or maintenance before the relevant component parts, plans and other documentation of the Facility Management Plan applicable to such Work have been submitted to and approved by TxDOT.

9.1.5 If any part, plan or other documentation of the Facility Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document then all such referenced or incorporated materials shall be submitted to TxDOT for approval in its good faith discretion at the time that the relevant part, plan or other documentation of the Facility

Management Plan or change, addition or revision to the Facility Management Plan is submitted to TxDOT.

9.1.6 Developer shall carry out internal audits of the Facility Management Plan at the times prescribed in the Facility Management Plan.

9.1.7 Developer shall cause each of its Contractors at every level to comply with the applicable requirements of the approved Facility Management Plan.

9.1.8 The Quality Manager shall, irrespective of his other responsibilities, have defined authority for ensuring the establishment and maintenance of the Facility Management Plan and reporting to TxDOT and the Independent Engineer on the performance of the Facility Management Plan.

9.2 Traffic Management

9.2.1 During the Operating Period, Developer shall be responsible for the general management of traffic on the Facility. Developer shall manage traffic so as to preserve and protect safety of traffic on the Facility and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the Facility and Related Transportation Facilities. Developer shall conduct traffic management in accordance with all applicable Technical Provisions, Technical Documents, Laws and Governmental Approvals, and in accordance with the Traffic Management Plan.

9.2.2 Developer shall prepare and submit to TxDOT and the Independent Engineer for TxDOT approval a Traffic Management Plan for managing traffic on the Facility and Related Transportation Facilities after NTP2 and NTP2 (3C), as applicable, addressing (a) orderly and safe movement and diversion of traffic on the Facility and Related Transportation Facilities during Facility construction (b) orderly and safe diversion of traffic on the Facility and Related Transportation Facilities necessary in connection with field maintenance and repair work or Renewal Work or in response to Incidents, Emergencies and lane closures; and (c) orderly and safe movement of traffic on the Facility at all other times during the Operating Period. Developer shall prepare the Traffic Management Plan according to the schedule set forth in the Technical Provisions. The Traffic Management Plan shall comply with the Technical Provisions and Technical Documents concerning traffic management and traffic operations. Developer shall carry out all traffic management during the Term in accordance with the approved Traffic Management Plan.

9.2.3 Developer shall implement the Traffic Management Plan to promote safe and efficient operation of the Facility and Related Transportation Facilities at all times during the course of any construction or operation of the Facility and during the Utility Adjustment Work.

9.2.4 TxDOT shall have at all times, without obligation or liability to Developer, the right to:

9.2.4.1 Issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control, of the Facility during any period that (a) TxDOT designates the Facility or portion of the Facility for immediate use as an emergency evacuation route or a route to respond to a disaster proclaimed by the Governor of Texas or his/her designee, including reversing the

direction of traffic flow during such period, (b) tolling is suspended to facilitate emergency evacuation by any federal or State agency or instrumentality other than TxDOT, (c) TxDOT designates the Facility or a portion of the Facility for immediate use as an alternate route for diversion of traffic from any interstate or Highway or frontage road temporarily closed to all lanes in one or both directions due to incident or emergency or (d) the Executive Director determines such action will be in the public interest as a result of an emergency or natural disaster; and

9.2.4.2 Provide on the Facility, via message signs or other means consistent with Good Industry Practice, non-Discriminatory traveler and driver information, and other public information (e.g. amber alerts), provided that the means to disseminate such information does not materially interfere with the functioning of the ETCS.

9.3 Oversight, Inspection and Testing

9.3.1 Oversight by Independent Engineer

9.3.1.1 From and after the Effective Date and execution of the Independent Engineer Joint Work Authorization, the Independent Engineer shall have the right and responsibility to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the FA Documents and the Independent Engineer Joint Work Authorization. The Parties shall cause the Independent Engineer Joint Work Authorization to include all the rights and responsibilities of the Independent Engineer set forth in the FA Documents.

9.3.1.2 The Independent Engineer's rights and responsibilities shall include throughout the Term the following:

(a) Monitoring and auditing Developer and its books and records to determine compliance with requirements of the FA Documents and the approved Facility Management Plan, including (i) audit review of Design Documents, Plans, Construction Documents and other Submittals and (ii) audit review regarding Patron Confidential Information, as provided in Section 8.8.7;

(b) Conducting field monitoring and inspections on an audit basis as indicated in the FA Documents and Independent Engineer Joint Work Authorization, including in connection with TxDOT's certifications of Substantial Completion, TxDOT Substantial Completion, Service Commencement and Final Acceptance;

(c) Conducting Owner Verification Tests ("OVT") to verify Developer's compliance with all testing frequencies and requirements, including performance and acceptance testing, set forth in the FA Documents and the approved Facility Management Plan. The Independent Engineer's OVT effort during construction will focus on materials, components, systems and Elements where Nonconforming Work, Deviations, Defects or other non-compliance could affect safety, compliance with Governmental Approvals or the Residual Life at Handback. Notwithstanding any contrary provisions hereof, the Independent Engineer will perform OVT as the express agent of TxDOT, under TxDOT's exclusive direction and control, and TxDOT will pay for all costs of the Independent Engineer's OVT services;

(d) Providing simultaneously to Developer, TxDOT and the Collateral Agent reports, quality reports, regular audit reports, reports on Performance Requirements,

Targets and Defects, other reports, and findings, opinions, evaluations, comments, objections and recommendations, all as more particularly set forth in the FA Documents and the Independent Engineer Joint Work Authorization;

(e) Reviewing and commenting on all Submittals for which TxDOT review and comment or approval is required under the FA Documents, unless expressly provided otherwise in the FA Documents or Independent Engineer Joint Work Authorization, or unless waived in writing by the Parties for a specific Submittal or type of Submittal;

(f) Reviewing, commenting on and giving recommendations, objections or disapprovals regarding the Renewal Work Schedule and revisions thereto, as provided in Section 8.6.5;

(g) Selecting Auditable Sections, accompanying Developer on physical inspections associated with Developer's Audit Inspections, conducting its own Audit Inspections, assessing and scoring Developer's O&M Records, and assessing and scoring the condition of Elements, as provided in the Maintenance Management Plan and Table 19-1 of the Technical Provisions;

(h) Attending and witnessing Developer's other tests and inspections;

(i) Auditing the books and records of Key Contractors to confirm compliance with the FA Documents and applicable Law;

(j) Investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders;

(k) Making recommendations on Relief Event Determinations and Developer Relief Event Determinations;

(l) Evaluating and reporting to TxDOT on Developer's estimates of cost impacts attributable to Compensation Events, Relief Events, Developer's projected impacts of proposed TxDOT Changes on the applicable Facility Schedule and Milestone Schedule, and Change Requests;

(m) Recommending suspension of work if circumstances exist that would entitle TxDOT to order suspension of work under Section 17.3.8;

(n) Notifying TxDOT of any Developer breach or failure specified in Exhibit 18, recommending assessment of Noncompliance Points, and reporting on Developer's cure or failure to cure, as provided in Section 18.2;

(o) Reviewing, commenting on and giving recommendations, objections or disapprovals regarding the Payment Request and revisions thereto, as provided in Exhibit 7;

(p) Attending regularly scheduled progress meetings regarding the Design Work, Construction Work and TxDOT Works;

(q) Confirming that the conditions for TxDOT Substantial Completion have been satisfied; and

(r) Confirming that all items of the Punch List in respect of the TxDOT Works have been completed.

9.3.1.3 Developer and TxDOT at all times shall coordinate and cooperate with the Independent Engineer to facilitate the full, efficient, effective and timely performance by the Independent Engineer of his or her monitoring, inspection, sampling, measuring, testing, reporting, auditing, and other oversight functions specified in this Agreement and the Independent Engineer Joint Work Authorization. Without limiting the foregoing, Developer and TxDOT shall afford the Independent Engineer safe access to the Facility and Developer's Facility offices, operations buildings and data respecting the Facility design, construction, operations and maintenance, and the Utility Adjustment Work, and shall deliver to the Independent Engineer upon request accurate and complete books, records, data and information regarding Work, the Facility and the Utility Adjustment Work, in the format required by the Technical Provisions.

9.3.1.4 The Independent Engineer shall be required to report and give notices to TxDOT, Developer and Lenders in accordance with the terms of the Independent Engineer Joint Work Authorization.

9.3.1.5 Except as provided in Section 9.3.1.2(c), costs and expenses for the Independent Engineer shall be allocated equally between Developer and TxDOT, as set forth in the Independent Engineer Joint Work Authorization.

9.3.1.6 Wherever in the FA Documents it is stated that the Independent Engineer shall or may perform an action, function or task, it means that the Parties agree that the Independent Engineer has been or will be given the right and obligation to perform the same under the Independent Engineer Joint Work Authorization.

9.3.1.7 The Independent Engineer is procured by TxDOT, with input from Developer, to assist them with fair and objective oversight and administration of this Agreement and the Work. Nothing in this Agreement, the Technical Provisions or the Independent Engineer Joint Work Authorization is intended or shall be construed as vesting in the Independent Engineer any powers or authority to:

- (a) Arbitrate or render binding decisions or judgments;
- (b) Approve or disapprove Submittals or Work (unless expressly provided otherwise in the FA Documents or Independent Engineer Joint Work Authorization for specific Submittals);
- (c) Conduct "over-the-shoulder" reviews of Design Documents or other Submittals;
- (d) Conduct formal prior reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless TxDOT chooses to have the Independent Engineer do so pursuant to Section 18.5;
- (e) Direct design, construction, operations or maintenance of the Facility, or order suspensions of Work, except to give such direction or order or take such

action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

(f) Undertake Developer's primary responsibility for quality assurance and quality control; or

(g) Act as an agent of TxDOT or Developer, except as provided in Section 9.3.1.2(c).

9.3.1.8 In the event the Parties determine that the Independent Engineer Joint Work Authorization for any reason is inconsistent with the provisions of the FA Documents on the scope of work, roles, responsibilities or compensation of the Independent Engineer, or fails to include any such scope of work, role, responsibility or compensation terms, the Parties shall use diligent efforts to amend the Independent Engineer Joint Work Authorization to correct the inconsistency or failure.

9.3.2 Oversight by TxDOT, FHWA

9.3.2.1 TxDOT and its Authorized Representative shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Facility or the Work, to the extent necessary or advisable (a) to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements, (b) to verify on an audit basis Developer's compliance with the FA Documents and Facility Management Plan as provided in Section 22.2 and (c) to verify the Independent Engineer's proper performance of its responsibilities and obligations. TxDOT shall conduct such activity in accordance with Developer's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Facility.

9.3.2.2 Refer to Section 22.2 for TxDOT's rights to audit Developer and its Contractors. Developer acknowledges and agrees that TxDOT will have the right to audit, monitor and inspect the Independent Engineer and its compliance with Good Industry Practice and its responsibilities and obligations under the Independent Engineer Joint Work Authorization.

9.3.2.3 TxDOT will not conduct formal prior reviews of Design Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless TxDOT chooses to do so pursuant to Section 18.5. TxDOT does not intend to conduct "over-the-shoulder" reviews of Design Documents or other Submittals but reserves the right to do so pursuant to Section 18.5. TxDOT shall have no obligation to conduct "over-the-shoulder" reviews.

9.3.2.4 Nothing in the FA Documents shall preclude, and Developer shall not interfere with, any review or oversight of Submittals or of Work that the FHWA may desire to conduct.

9.3.3 Rights of Cooperation and Access; Increased Oversight

9.3.3.1 Developer at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with the Independent Engineer to facilitate the full, efficient, effective and timely performance by the Independent Engineer of his or her

monitoring, inspection, sampling, measuring, testing, reporting, auditing, and other oversight functions.

9.3.3.2 Developer at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with TxDOT and its Authorized Representative to facilitate TxDOT's oversight activities. Developer shall cause its representatives to be available at all reasonable times for consultation with TxDOT and the Independent Engineer.

9.3.3.3 Without limiting the foregoing, Developer shall afford TxDOT, its Authorized Representative and the Independent Engineer (a) safe and unrestricted access to the Facility at all times, (b) safe access during normal business hours to Developer's Facility offices and operations buildings and (c) unrestricted access to data respecting the Facility design, construction, operations and maintenance, and the Utility Adjustment Work. Without limiting the foregoing, Developer shall deliver to TxDOT and the Independent Engineer upon request accurate and complete books, records, data and information regarding Work, the Facility and the Utility Adjustment Work, in the format required by the Technical Provisions.

9.3.3.4 TxDOT and the Independent Engineer shall have the right to increase the type and level of their oversight as provided in Section 18.5.

9.3.4 Testing and Test Results

Each of the Independent Engineer and TxDOT shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and applicable Management Plans. Developer shall provide to the Independent Engineer and TxDOT all test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) within ten days after Developer receives them.

9.3.5 Optional TxDOT Materials Inspection and Testing Services

Without in any way diminishing Developer's responsibility for the Work, including quality assurance and quality control of the Facility and the Work, at Developer's request, TxDOT may participate in Developer's quality assurance and quality control process by performing certain material inspection and testing services pursuant to the terms of and as more particularly described in Exhibit 33. Such services shall not diminish, and are in addition to, TxDOT's and the Independent Engineer's other rights under the FA Documents to monitor, inspect, sample, measure, test, investigate, audit and conduct other oversight. Section 6.3.8 shall apply with full force and effect with regard to TxDOT material inspection and testing services pursuant to Exhibit 33. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT TXDOT WILL NOT BE RESPONSIBLE OR BEAR ANY LIABILITY FOR, AND HEREBY RELEASES TXDOT FROM, ANY DAMAGES, INCREASED COSTS, REVENUE LOSSES, DELAYS, OR OTHER IMPACTS TO DEVELOPER OR TO ANY THIRD PARTY, ARISING AS A RESULT OF THE SERVICES PERFORMED BY TXDOT PURSUANT TO EXHIBIT 33, INCLUDING THOSE ARISING FROM ANY NEGLIGENT ACT OR OMISSION OF TXDOT, OR FAILURE OF OR DEFECT IN ANY MATERIAL OR PRODUCT INSPECTED OR TESTED, REGARDLESS OF WHEN SUCH FAILURE OR DEFECT MAY OCCUR OR BE DISCOVERED.**

ARTICLE 10. CONTRACTING AND LABOR PRACTICES

10.1 Disclosure of Contracts and Contractors

10.1.1 Developer shall provide TxDOT and the Independent Engineer a monthly report listing (a) all Key Contracts in effect, (b) all Contracts in effect to which Developer is a party and (c) where Developer is a party to a Contract in effect with an Affiliate, all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Developer are delegated to the Contractor. Developer also shall list in the monthly report the Contractors under such Contracts, guarantees of Key Contracts in effect and the guarantors thereunder. Developer shall allow TxDOT and the Independent Engineer ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guarantees thereof, provided, however, that Developer may provide access thereto by depositing unredacted copies in an Intellectual Property Escrow as provided in Section 22.5.

10.1.2 As soon as Developer identifies a potential Contractor for a potential Contract described in the first sentence of Section 10.1.1, but in no event later than five days after Contract execution, Developer shall notify TxDOT in writing of the name, address, phone number and authorized representative of such Contractor.

10.2 Responsibility for Work, Contractors and Employees

10.2.1 Developer shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall assure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws. The Parties acknowledge that the procedure for selecting the GP Capacity Improvements Design-Build Contractor is designed to result in use of a qualified, experienced and capable Contractor.

10.2.2 The retention of Contractors by Developer will not relieve Developer of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

10.2.3 Each Contract shall include terms and conditions sufficient to ensure compliance by the Contractor with the applicable requirements of the FA Documents, and shall include those terms that are specifically required by the FA Documents to be included therein, including, to the extent applicable, those set forth in Exhibit 8 and any other applicable federal requirements.

10.2.4 Nothing in this Agreement will create any contractual relationship between TxDOT and any Contractor. No Contract entered into by or under Developer shall impose any obligation or liability upon TxDOT to any Contractor or any of its employees.

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

10.3 Key Contracts; Contractor Qualifications

10.3.1 Use of and Change in Key Contractors

Developer shall retain, employ and utilize the firms and organizations specifically listed in the Facility Management Plan to fill the corresponding Key Contractor positions listed therein. Developer shall not terminate any Key Contract with a Key Contractor, or permit or suffer any substitution or replacement (by way of assignment of the Key Contract, transfer to another of any material portion of the scope of work, or otherwise) of such Key Contractor, except in the case of material default by the Key Contractor or with TxDOT's prior written approval in its good faith discretion. For Key Contractors not known as of the Effective Date, Developer's selection thereof shall be subject to TxDOT's prior written approval in TxDOT's good faith discretion; provided that Exhibit 16 shall exclusively govern the scope of TxDOT's approvals regarding selection of any GP Capacity Improvements Design-Build Contractor.

10.3.2 Key Contract Provisions

Each Key Contract shall:

10.3.2.1 Expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

10.3.2.2 Expressly require the Key Contractor to participate, at Developer's request, in meetings between Developer and TxDOT concerning matters pertaining to such Key Contractor, its work or the coordination of its work with other Contractors, provided that all direction to such Key Contractor shall be provided by Developer, and provided further that nothing in this Section shall limit the authority of TxDOT or the Independent Engineer to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

10.3.2.3 Include an agreement by the Key Contractor to give evidence in any dispute resolution proceeding pursuant to Section 17.8, if such participation is requested by either TxDOT or Developer;

10.3.2.4 Without cost to Developer or TxDOT, and subject to the rights of the Collateral Agent set forth in Article 20, expressly permit assignment to TxDOT or its successor, assign or designee of all Developer's rights and obligations (except for liabilities of Developer accruing before the date of assumption under the Key Contract), contingent only upon delivery of written request from TxDOT following termination or expiration of this Agreement, allowing TxDOT or its successor, assign or designee to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility;

10.3.2.5 Expressly state that any acceptance of assignment of the Key Contract to TxDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Developer or for any amounts due and owing under the Key Contract for work or services rendered prior to assumption (but without restriction on the Key Contractor's rights to suspend work or demobilize due to Developer's breach);

10.3.2.6 Expressly include a covenant to recognize and attorn to TxDOT upon receipt of written notice from TxDOT that it has exercised step-in rights under this Agreement, without necessity for consent or approval from Developer or to determine whether TxDOT validly exercised its step-in rights, and Developer's covenant to waive and release any claim or cause of action against the Key Contractor arising out of or relating to its recognition and attornment in reliance on any such written notice;

10.3.2.7 Expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to TxDOT a new contract between the Key Contractor and TxDOT on the same terms and conditions as the Key Contract, in the event (a) the Key Contract is rejected by Developer in bankruptcy or otherwise wrongfully terminated by Developer and (b) TxDOT delivers written request for such new contract following termination or expiration of this Agreement. The Key Contract also shall include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Key Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Developer terminates it, then the Key Contractor also shall execute and deliver to TxDOT, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. This Section shall not apply to Key Contracts with TxDOT or Governmental Entities;

10.3.2.8 Expressly include requirements that: the Key Contractor (a) 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), (b) permit audit thereof with respect to the Facility or Work by each of Developer, TxDOT and the Independent Engineer in accordance with Section 22.2 and (c) 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 or the Independent Engineer under this Agreement;

10.3.2.9 Include the right of Developer to terminate the Key Contract in whole or in part upon any Termination for Convenience of this Agreement and the Lease or any termination of this Agreement and the Lease due to Force Majeure Event or TxDOT Default, in each case without liability of Developer or TxDOT for the Key Contractor's lost profits or business opportunity; and

10.3.2.10 Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of TxDOT shall be null and void.

10.3.3 Additional Requirements for Design-Build and O&M Contracts

10.3.3.1 Before entering into a Design-Build Contract or an O&M Contract or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Design-Build Contract or O&M Contract to TxDOT for review and comment. TxDOT may disapprove only if such Design-Build Contract or O&M Contract (a) does not comply, or is inconsistent, in any material respect with the applicable requirements of the FA Documents, including that it does not comply or is inconsistent with this Article 10 or with the applicable requirements of Section 22.1 regarding maintenance of books and records, does not incorporate the applicable federal requirements set forth in Exhibit 8, or is inconsistent with

the requirements of the relevant scope of Work, (b) increases TxDOT's liability or (c) adversely affects TxDOT's step-in rights.

10.3.3.2 Each Design-Build Contract and each O&M Contract also shall expressly require the personal services of and not be assignable by the applicable Design-Build Contractor or O&M Contractor without Developer's and TxDOT's prior written consent each in its sole discretion, provided that this provision shall not prohibit the subcontracting of portions of the Work. The provision included pursuant to Section 10.3.2.10 shall apply to such express provisions on personal services and non-assignment.

10.3.3.3 Prior to the Service Commencement Date for the Segment 3C Facility Segment, Developer shall obtain and deliver to TxDOT (a) an amendment to that certain Agreement for the Provision and Implementation of a Central System and License Agreement (CSLA), dated as of May 16, 2014, between Developer and Cintra Toll Services LLC (CTS), and a provision in any subsequent agreement with CTS for operation and maintenance of the Dallas Central System, extending the rights and licenses granted to TxDOT in the CSLA to the Segment 3C Facility Segment, and (b) the consent of CTS to the Key Contract provisions contemplated by Section 10.3.2 of this Agreement and its written acknowledgement that the provisions in Article XI of the CSLA survive expiration or termination of the CSLA. Such amendment and provisions in a subsequent agreement with CTS shall be subject to TxDOT's review and comment. Developer hereby acknowledges that the rights and licenses granted to TxDOT in the CSLA will survive expiration or termination of the CSLA. Developer shall recognize and incorporate such rights and licenses in any subsequent agreement with CTS for operation and maintenance of the Dallas Central System.

10.4 Key Personnel

10.4.1 Developer shall retain, employ and utilize the individuals specifically listed in Exhibit 2 to fill the corresponding Key Personnel positions listed therein. Developer shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by TxDOT pursuant to Section 10.4.2. In such circumstances, Developer shall promptly propose a replacement for such position.

10.4.2 Developer shall notify TxDOT in writing of any proposed replacement for any Key Personnel position. TxDOT shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual. If Developer fails to provide a proposed replacement that is sufficiently qualified to TxDOT within 90 days for any Key Personnel position, then the Developer shall be subject to Noncompliance Points as provided in Article 18.

10.4.3 Developer shall cause each individual filling a Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the Work.

10.4.4 Developer shall provide TxDOT and the Independent Engineer phone and pager numbers and email addresses for all Key Personnel. TxDOT and the Independent Engineer require the ability to contact Key Personnel 24 hours per day, seven days per week.

10.5 Contracts with Affiliates

10.5.1 Developer shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

10.5.1.1 Developer shall execute a written Contract with the Affiliate;

10.5.1.2 The Contract shall comply with all applicable provisions of this Article 10, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work or services with unaffiliated Contractors;

10.5.1.3 The Contract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;

10.5.1.4 The pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

10.5.1.5 No Affiliate (other than a Design-Build Contractor if it is an Affiliate and, as to the GP Capacity Improvements Design-Build Contractor, if it is qualified and selected in accordance with Exhibit 16) shall be engaged to perform any Work or services which any FA Documents or the Facility Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

10.5.2 Before entering into a written Contract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to TxDOT for review and comment. TxDOT shall have 20 days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract and such Affiliate's selection as a Key Contractor is not known as of the Effective Date, the Affiliate shall be subject to TxDOT's approval as provided in Section 10.3.1. This Section 10.5.2 does not apply to a GP Capacity Improvements Design-Build Contract procured and entered into with an Affiliate in accordance with the competitive procurement process set forth in Part A of Exhibit 16.

10.5.3 Developer shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable Mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

10.6 Labor Standards

10.6.1 In the performance of its obligations under the FA Documents, Developer at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.

10.6.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them.

10.6.3 If any individual employed by Developer or any Contractor is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual 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 delivering to Developer written notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the FA Documents or entitle Developer to any additional compensation or time extension hereunder.

10.7 Ethical Standards

10.7.1 Within 90 days after the Effective Date, Developer shall adopt written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel, in dealing with (a) TxDOT and the Independent Engineer and (b) employment relations. Such policy shall be subject to review and comment by TxDOT prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

10.7.1.1 Restrictions on gifts and contributions to, and lobbying of, TxDOT, the Texas Transportation Commission, the Independent Engineer and any of their respective commissioners, directors, officers and employees;

10.7.1.2 Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

10.7.1.3 Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Developer-Related Entity;

10.7.1.4 Restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Facility or employees;

10.7.1.5 Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the Facility, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

10.7.1.6 Restrictions on directors, members, officers or employees of any Developer-Related Entity performing any of the Work if the performance of such services

would be prohibited under TxDOT's published conflict of interest rules and policies applicable to TxDOT's comprehensive development agreement program, or would be prohibited under Texas Government Code, Section 572.054.

10.7.2 Developer shall cause its directors, members, officers and supervisory and management personnel, and require those of all other Developer-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct. Developer shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

10.8 Non-Discrimination; Equal Employment Opportunity

10.8.1 Developer shall not, and shall cause the Contractors to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work under the FA Documents. Developer shall carry out, and shall cause the Contractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in a Default Termination Event and the termination of this Agreement and the Lease or such other remedy permitted hereunder as TxDOT deems appropriate (subject to Developer's and Lenders' rights to notice and opportunity to cure set forth in this Agreement).

10.8.2 Developer shall include the immediately preceding paragraph in every Contract (including purchase orders and in every Contract of any Developer-Related Entity for Work), and shall require that they be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor.

10.8.3 Developer confirms for itself and all Contractors that Developer and each Contractor 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 Contractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Developer shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in Exhibit 8, and shall require its Contractors to comply with such provisions.

10.9 Disadvantaged Business Enterprise

10.9.1 General

10.9.1.1 TxDOT's Disadvantaged Business Enterprise (DBE) Special Provisions applicable to the Facility are set forth in Exhibit 13 (the "DBE Special Provisions"). The purpose of the DBE Special Provisions 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. Developer shall comply with all applicable requirements set forth in the DBE Special Provisions and TxDOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, and the provisions in Developer's approved DBE Performance Plan, set forth in Exhibit 14.

10.9.1.2 Developer shall include provisions to effectuate the DBE Special Provisions in every Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor.

10.9.2 DBE Participation Goals

10.9.2.1 The goal for DBE participation in the Work required under this Agreement for professional services and construction of the Facility shall be 6%.

10.9.2.2 Developer shall exercise good faith efforts to achieve such DBE participation goal for the Facility through implementation of Developer's approved DBE Performance Plan.

10.9.2.3 Developer agrees to use good faith efforts to encourage DBE participation in the O&M Work.

10.9.3 Cancellation of DBE Contracts

Developer shall not cancel or terminate any Contract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Contracts with DBE firms set forth in the DBE Special Provisions in Exhibit 13.

10.10 Job Training and Small Business Mentoring Plan

10.10.1 Developer's Job Training and Small Business Mentoring Plan applicable to the Facility is set forth in Exhibit 15. The purpose of the Job Training and Small Business Mentoring Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in of the Job Training and Small Business Mentoring Plan. Prior to issuance of NTP2 (3C), Developer shall submit to TxDOT and obtain TxDOT's approval of an updated Job Training and Small Business Mentoring Plan that addresses, to TxDOT's satisfaction, job training and mentoring for the Segment 3C Facility Segment. Among other things, the updated Plan shall establish for the Segment 3C Facility Segment a job training program to assist with developing women, Blacks, Hispanics, and others (including, American Indian, Alaskan, Native, Asian, or Pacific Islander) in the "critical crafts" designated annually by TxDOT. The Plan also shall include for the Segment 3C Facility Segment training goals for on-site and off-site, the cost of training, and a schedule for training. The schedule for training shall include job classifications, number of trainees per classification, and the anticipated start times in each classification.

10.10.2 Developer shall include provisions to effectuate the Job Training and Small Business Mentoring Plan in every Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Contracts at lower tiers (including purchase orders and task orders for Work), except for Contracts with TxDOT or Governmental Entities, so that such provisions will be binding upon each Contractor. The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities.

10.11 State Use Program

10.11.1 Developer shall comply with the provisions of the Texas Human Resources Code, Chapter 122 that are placed on TxDOT with respect to O&M Work. The use of Community Rehabilitation Programs (CRPs) is outlined in Chapter 122 and 40 Texas Administrative Code §189 and is strongly encouraged by TxDOT. Specifically, Section 122.008 (Procurement at Determined Prices) states: "A suitable product or service that meets applicable

specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a CRP at the price determined by the council to be the fair market price."

10.11.2 Developer shall make a good faith effort to negotiate with CRPs and the Texas Industries for the Blind and Handicapped (TIBH) for subcontracts at a fair market price. TxDOT reserves the right to facilitate disputes involving subcontracts or potential subcontracts with CRPs and TIBH.

10.12 Prevailing Wages

10.12.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Texas Government Code, Chapter 2258 and the Davis-Bacon Act, and as provided in Exhibit 8. Developer shall comply and cause its Contractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Facility shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Facility). The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities.

10.12.2 It is Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, Developer shall bear the cost of such changes and shall have no Claim against TxDOT on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon Developer's lack of knowledge or a misunderstanding of any such requirements or Developer's failure to include in the Base Case Financial Model or Base Case Financial Model Updates adequate increases in such wages over the duration of this Agreement and the Lease.

10.12.3 Any issue between Developer or a Contractor, other than TxDOT or a Governmental Entity acting as a Contractor, and any affected worker relating to any alleged violation of Texas Government Code, Section 2258.023 that is not resolved before the 15th day after the date TxDOT makes its initial determination under Texas Government Code, Section 2258.052 (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Civil Practice and Remedies Code, Chapter 171.

10.12.4 Developer shall comply and cause its Contractors, other than TxDOT or Governmental Entities acting as Contractors, to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

10.12.5 The prevailing wage rates for each of the following portions of the Facility shall be determined as follows:

10.12.5.1 For the Segment 3C Facility Segment Work, the prevailing rates of wages shall be those set forth in Attachment 3-1 to Exhibit 8;

10.12.5.2 For the GTBR Capacity Improvement, the prevailing rates of wages shall be those set forth in the Federal Prevailing Wage Rate General Decision for

Tarrant County Texas, Highway construction type, most recently published prior to issuance of NTP GTBR;

10.12.5.3 For the GP Capacity Improvements, the prevailing rates of wages shall be those set forth in the Federal Prevailing Wage Rate General Decision for Tarrant County Texas, Highway construction type, most recently published prior to issuance of NTP GP; and

10.12.5.4 For the 3C Ultimate Capacity Improvement, the prevailing rates of wages shall be those set forth in the Federal Prevailing Wage Rate General Decision for Tarrant County Texas, Highway construction type, most recently published prior to issuance of NTP 3C UCI.

10.13 Prompt Payment to Contractors

Developer shall require that the following provisions be incorporated in each Design-Build Contract:

10.13.1 The applicable Design-Build Contractor shall pay each subcontractor for Work satisfactorily performed within ten days after receiving payment from Developer for the Work satisfactorily performed by the subcontractor, and shall pay any retainage on a subcontractor's Work within ten days after satisfactory completion of all of the subcontractor's Work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor. For the purpose of this Section 10.13, satisfactory completion is accomplished when:

10.13.1.1 The subcontractor has fulfilled the requirements of both such Design-Build Contract and the subcontract for the subcontracted Work, including the submittal of all information required by the specifications and the applicable Design-Build Contractor; and

10.13.1.2 The work done by the subcontractor has been inspected and approved by Developer and the final quantities of the subcontractor's work have been determined and agreed upon.

10.13.2 The foregoing payment requirements apply to all tiers of subcontractors and shall be incorporated into all subcontracts.

10.14 Suspension and Debarment

Developer shall deliver to TxDOT, not later than January 31 of each year through the last Final Acceptance, and upon each Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from Developer, from each affiliate of Developer (as "affiliate" is defined in 29 CFR 105 or successor regulation of similar import), and from each Contractor whose Contract amount equals or exceeds \$100,000. The annual certification shall be substantially in the applicable form prescribed in Section X of Attachment 2 to Exhibit 8.

10.15 Uniforms

Any uniforms, badges, logos and other identification worn by personnel of Developer-Related Entities shall bear colors, lettering, design or other features to assure clear differentiation from those of TxDOT and its employees.

10.16 Minimum Subcontracting for Segment 3C Facility Segment

10.16.1 Developer shall cause the Design-Build Contractor for the Segment 3C Facility Segment to subcontract to and pay Contractors and Suppliers that are not Affiliates a cumulative amount of at least 50% of (a) the Construction Work for the Segment 3C Facility Segment and (b) the Construction Work included in the Change Order respecting the Mark IV Parkway intersection, U-turn bridges and other improvements (the "Mark IV Change Order Construction Work").

10.16.2 Developer shall annually certify to TxDOT, within 30 days after the end of each calendar year, (a) the total amount awarded to Contractors and Suppliers that are not Affiliates for Construction Work for the Segment 3C Facility Segment and for the Mark IV Change Order Construction Work, and (b) the total amount expended on Construction Work for the Segment 3C Facility Segment and on the Mark IV Change Order Construction Work. Developer shall deliver a final certification within 60 days after the date of Substantial Completion of the Segment 3C Facility Segment, certifying as to (i) the final amounts paid to Contractors and Suppliers that are not Affiliates for Construction Work for the Segment 3C Facility Segment and for the Mark IV Change Order Construction Work, and (ii) the final total amount expended on Construction Work for the Segment 3C Facility Segment and on the Mark IV Change Order Construction Work.

10.16.3 If Developer fails to satisfy the requirement set forth in Section 10.16.1, then TxDOT shall be entitled to liquidated damages in an amount equal to 5% of the difference between 50% of the Construction Work for the Segment 3C Facility Segment and the Mark IV Change Order Construction Work and the final aggregate amount paid to Contractors and Suppliers that are not Affiliates for Construction Work for the Segment 3C Facility Segment and for the Mark IV Change Order Construction Work. Developer acknowledges that such liquidated damages are a reasonable estimate of the minimum amount of damages TxDOT will incur as a result of failure to adequately subcontract out Construction Work to Contractors and Suppliers that are not Affiliates. Such damages include increased cost to TxDOT to carry out its design and construction program due to reasonably foreseeable erosion of the pool of financially healthy, competitive subcontractors available to bid on TxDOT's design and construction projects and due to reasonably foreseeable loss of good will and harm to TxDOT's reputation in the subcontracting community at large. Developer further acknowledges that these damages are incapable of accurate measurement.

ARTICLE 11. RELATED AND OTHER FACILITIES

11.1 Integration of Facility and with Related Transportation Facilities

11.1.1 Integration of Facility

11.1.1.1 Developer shall locate, configure and design the portion of the Facility other than the TxDOT Works, including its transition to the TxDOT Works, and TxDOT shall locate, configure and design the TxDOT Works, including its transition to the other

portion of the Facility, so that both portions of the Facility will be compatible and integrated with each other and provide a smooth, safe transition of traffic (and other infrastructure) to and from each such portion, as set forth in Section 1 of the Technical Provisions. The design and Right of Way Acquisition Plan for each such portion of the Facility shall include and provide for such compatibility, integration and transition. The design and construction of the portion of the Facility other than the TxDOT Works and any Capacity Improvements designed and constructed by TxDOT shall satisfy all provisions of the Technical Provisions and Facility Management Plan relating to compatibility, integration and transition with the TxDOT Works, including those concerning signage, signaling and communications with Users.

11.1.1.2 For the period between the Effective Date and NTP2 or NTP2 (3A), as the case may be, Developer shall notify TxDOT in writing, at least five Business Days in advance of any Work, testing, surveying, traffic control, or investigating that is to take place in the area adjacent to the Segment 3B Facility Segment or that may, in any way, be reasonably expected to impact Work, testing, surveying, traffic control, or investigating on the Segment 3B Facility Segment. Such notification shall include the type of Work, testing, surveying, traffic control, or investigating that is to take place, the days and hours of the day the Work, testing, surveying, traffic control, or investigating is to take place, the anticipated impacts to the Segment 3B Facility Segment Work, mitigation measures Developer shall implement to minimize said impacts, and contact information for the Developer employee who is in charge of the Work, testing, surveying, traffic control, or investigating. Contact information shall include the name of the person in charge, their cell phone number, their office telephone number, and their email address. This person shall provide the name and the same contact information for any person taking over these responsibilities should the initial contact person be unavailable for any period of time.

11.1.1.3 Prior to 30 days after the Recalibration Date, TxDOT and Developer shall prepare jointly, and thereafter shall diligently implement, a mutually acceptable coordination plan to coordinate design, construction, maintenance and operation of the portions of the Facility or adjacent infrastructure for which each is respectively responsible. The coordination plan shall include (a) communications protocols for real-time information sharing and access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of either Party or its contractors and consultants pertaining to design and construction, (b) terms and provisions for coordination of construction and testing schedules, activities and progress in order to maximize cooperation and minimize disruption of the other Party's construction progress, (c) provisions relating to notification to Developer of each change to the NTE Segment 3B final design set forth in Attachment A to Exhibit 26 that is a TxDOT Change under clause (b) of the definition of TxDOT Change, in each case, solely to the extent permitted pursuant to the terms hereof, and (d) coordination for the following items at the project interfaces: above ground and underground Utilities; Segment 3B Facility Segment design package submittals; Construction Work phasing, traffic management and Traffic Management Plans; Schedule; removal of temporary pavement; high mast lighting; drainage; water quality and erosion control; grading limits of transitions; paving limits of transitions; signing of transitions; removal of temporary signing; striping of transitions; removal of temporary striping; access for contractors of adjacent segments and/or projects; retaining walls; ITS; and any other aspect of design, construction, operation and/or maintenance where coordination would constitute good industry practice. The coordination plan will include a mechanism for developing a mutually acceptable update to the coordination plan within two weeks from a date when it becomes apparent that the then-current coordination plan is deficient for coordination purposes with either Party.

11.1.2 Integration with Related Transportation Facilities

11.1.2.1 Developer shall locate, configure, design, operate and maintain the termini, interchanges, entrances and exits of the Facility, and TxDOT shall locate, configure and design the TxDOT Works, so that the Facility will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe transition of traffic to and from, Related Transportation Facilities. The design and Right of Way Acquisition Plan for the Facility shall include and provide for such compatibility, integration and transition. The design, construction, operation and maintenance of the Facility shall satisfy all provisions of the Technical Provisions and Facility Management Plan relating to compatibility, integration and transition between the TxDOT Works and the rest of the Facility, and with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users. Developer shall not block or restrict, partially or wholly, access to or from the Facility from or to any Related Transportation Facility without the prior express written consent of, and on such terms and conditions as may be specified by, TxDOT and the applicable local agency or other party, as the case may be.

11.1.2.2 Without limiting the foregoing, Developer shall cooperate and coordinate with TxDOT and any third party that owns, constructs, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the Facility and the Related Transportation Facilities, in order to minimize disruption to the operation of the Facility and the Related Transportation Facilities.

11.1.2.3 To assist Developer, TxDOT shall provide to Developer during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of TxDOT or its contractors and consultants pertaining to Related Transportation Facilities. Developer, at its expense, shall have the right to make copies of the same. Developer, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and achieve such compatibility, integration and transition.

11.1.2.4 TxDOT shall provide reasonable assistance to Developer, upon its request and at its expense, in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include TxDOT's participation in meetings and discussions. In no event shall TxDOT be required to bring any legal action or proceeding against any such third party.

11.1.2.5 TxDOT shall have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on TxDOT's Related Transportation Facilities and all other facilities of the State transportation network in the area of the Facility in accordance with its standard traffic management practices and procedures in effect from time to time.

11.2 Reserved Airspace and Business Opportunities

11.2.1 Developer's rights and interests in the Facility and Facility Right of Way are and shall remain specifically limited only to such real and personal property rights and interests that are necessary or required for developing, permitting, designing, financing, constructing,

installing, equipping, operating, maintaining, tolling, repairing, reconstructing, rehabilitating, restoring, renewing or replacing the Facility and Developer's timely fulfillment of its obligations under the FA Documents. Developer's rights and interests specifically exclude any and all Airspace and any and all improvements and personal property above, on or below the surface of the Facility Right of Way which are not necessary and required for such purposes.

11.2.2 TxDOT reserves to itself, and Developer hereby relinquishes, all right and opportunity to develop and pursue anywhere in the world entrepreneurial, commercial and business activities that are ancillary or collateral to (a) the use, enjoyment and operation of the Facility and Facility Right of Way as provided in this Agreement and the Lease and (b) the collection, use and enjoyment of Toll Revenues as provided in this Agreement and the Lease ("Business Opportunities"). Unless expressly authorized by TxDOT in its sole discretion, Developer will not grant permission for any Person (other than TxDOT) to use or occupy the Facility for any ancillary or collateral purpose, whether through a sublease or otherwise. The foregoing reservation in no way precludes Developer or any Affiliate, Contractor or other Developer-Related Entity from (i) carrying out the Facility Plan of Finance and Segment 3C Plan of Finance, (ii) arranging and consummating Refinancings, (iii) creating and using brochures and other promotional and marketing material, responses to requests for qualifications or proposals, and similar communications that include descriptions, presentations and images of the Facility or the Work for the purpose of promoting its business of developing, financing and operating transportation projects, or (iv) proposing to TxDOT joint Business Opportunities, including expected financial and other terms, for TxDOT's consideration, provided that TxDOT will not consider any proposal to permit outdoor advertising and has no obligation to pursue Business Opportunities jointly with Developer.

11.2.3 The Business Opportunities reserved to TxDOT include all the following:

11.2.3.1 All rights to finance, design, construct, operate and maintain any passenger or freight rail facility, roads and highways or other mode of transportation in the Airspace, including tunnels, flyovers, frontage roads, local roads, interchanges and fixed guide-ways, and to grant to others such rights, subject to the provisions of Sections 11.2.4, 11.3.2, 12.1.1, 14.1.4 and Exhibit 16;

11.2.3.2 All rights to install, use, lease, grant infeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Facility Right of Way installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by Developer that is necessary for and devoted exclusively to the operation of the Facility. For avoidance of doubt, if Developer installs any such improvements, all use and capacity thereof not necessary for operation of the Facility is reserved to, and shall be the sole property of, TxDOT;

11.2.3.3 All rights to use, sell and derive revenues from traffic data and other data generated from operation of the Facility or any Electronic Toll Collection System except use of such data as required solely for operation of the Facility and enforcement and collection of tolls;

11.2.3.4 All ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and

operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;

11.2.3.5 All rights to install, use and derive information, services, capabilities and revenues from Intelligent Transportation Systems and applications, except installation and use of any such systems and applications by Developer as required solely for operation of the Facility. For avoidance of doubt, if Developer installs any such systems or applications, all use and capacity thereof not necessary for operation of the Facility is reserved to, and shall be the sole property of, TxDOT;

11.2.3.6 All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of TxDOT or the Facility, or that may be confused with those of TxDOT or the Facility;

11.2.3.7 All rights and opportunities to grant to others sponsorship, advertising and naming rights with respect to the Facility or any portion thereof, provided that in any sponsorship or naming rights transaction, TxDOT shall cause to be granted to Developer a non-exclusive license to use the name in connection with Facility operations;

11.2.3.8 All rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;

11.2.3.9 Any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Facility; and

11.2.3.10 All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of development, use, operation or maintenance of the Facility.

11.2.4 If the development, use or operation of the Airspace by TxDOT or anyone claiming under or through TxDOT, or if the development or operation of a Business Opportunity in the Airspace, prevents Developer from performing its fundamental obligations under this Agreement or materially adversely affects its costs or Toll Revenues, such impacts will be treated as a Relief Event under Section 13.1 and a Compensation Event under Section 13.2; provided, however, that:

11.2.4.1 If the Airspace is used for construction, operation, maintenance, repair, reconstruction, renewal, replacement and expansion of Related Transportation Facilities, then TxDOT shall have no liability, as a Compensation Event or otherwise, for any loss of Toll Revenues or increase in Developer's costs;

11.2.4.2 If the development, use or operation of the Airspace involves Capacity Improvements, then TxDOT's liability, if any, shall be as provided in Exhibits 7 and 16; and

11.2.4.3 If the development, use or operation of the Airspace involves a transportation facility other than as set forth in Section 11.2.4.1 or 11.2.4.2, the Compensation Amount shall be limited to (a) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction activities and (b) the increase in Developer's costs directly

caused by construction or operating activities, and shall not include loss of Toll Revenues (if any) caused by the operation of such transportation facility.

11.2.5 Prior to deciding whether to develop, use or operate the Airspace, TxDOT may call on Developer to provide analysis of the impacts thereof on Developer's costs, schedule and revenues, as if it were a Request for Change Proposal, in which case the Parties shall follow the procedures under Sections 14.1.2 through 14.1.8.

11.2.6 In the event a Developer Default concerns a breach of the provisions of this Section 11.2, in addition to any other remedies, TxDOT shall be entitled to Developer's disgorgement of all profits from the prohibited activity, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom.

11.2.7 Developer is prohibited by Law and this Section 11.2 from placing or permitting any outdoor advertising within the boundaries of the Facility Right of Way.

11.3 Unplanned Revenue Impacting Facilities

11.3.1 TxDOT Rights

11.3.1.1 Except for the limited rights to compensation provided to Developer under Section 11.3.2, TxDOT will have the right in its sole discretion, at any time and without liability, regardless of impacts on Toll Revenues, to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, rehabilitate, restore, renew and replace any existing and new transportation or other facilities (including, without limitation, free roads, connecting roads, service roads, frontage roads, turnpikes, managed lanes, HOT/HOV lanes, light rail, freight rail, bus lanes, etc.). Such right extends to facilities both within the Airspace and outside the Facility Right of Way, whether identified or not identified in transportation plans, and whether adjacent to, nearby or otherwise located as to affect the Facility, its operation and maintenance (including the costs and expenses thereof), its vehicular traffic and/or its revenues.

11.3.1.2 The foregoing facilities include those (a) owned or operated by TxDOT, including those owned or operated by a private entity pursuant to a contract with TxDOT; (b) owned or operated by a joint powers authority or similar entity to which TxDOT is a member, (c) owned or operated by a Governmental Entity pursuant to a contract with TxDOT, including regional mobility authorities, joint powers authorities, counties and municipalities, and (d) owned or operated by a Governmental Entity (including regional mobility authorities, joint powers authorities, counties and municipalities) with respect to which TxDOT has contributed funds, in-kind contributions or other financial or administrative support. The foregoing rights include the ability to institute, increase or decrease tolls on such facilities or modify, change or institute new or different operation and maintenance procedures.

11.3.1.3 TxDOT will have the right, without liability, to make discretionary and non-discretionary distributions of federal and other funds for any transportation projects, programs and planning, to analyze revenue impacts of potential transportation projects, and to exercise all its authority to advise and recommend on transportation planning, development and funding.

11.3.2 Exclusive Covenants and Remedies Regarding Unplanned Revenues Impacting Facilities

This Section 11.3.2 set forth Developer's sole and exclusive rights and remedies with respect to Unplanned Revenue Impacting Facilities, and supersedes any provisions of the FA Documents to the contrary. Such rights and remedies are subject to Section 11.3.3.

11.3.2.1 The Compensation Amount, if any, owing from TxDOT to Developer on account of the Unplanned Revenue Impacting Facility shall be equal to the loss of Toll Revenues, if any, attributable to the Unplanned Revenue Impacting Facility less the increase in Toll Revenues, if any, attributable to (a) the Unplanned Revenue Impacting Facilities, and (b) future additions or expansions of access points to the Managed Lanes by TxDOT or a Governmental Entity that are not included as part of the Work, if such Unplanned Revenue Impacting Facilities or future additions or expansions are under construction or in operation at the time Developer first delivers its Claim for compensation to TxDOT. The Compensation Amount also shall include (i) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction, reconstruction, renewal, replacement or expansion activities for the Unplanned Revenue Impacting Facility and (ii) the increase or decrease, as the case may be, in Developer's costs directly caused by construction or operating activities for the Unplanned Revenue Impacting Facility. The foregoing Compensation Amount, if any, shall be determined in the same manner, and shall be subject to the same conditions and limitations, as for a Compensation Event under Section 13.2; as well as the procedures in this Section.

11.3.2.2 Each Party may, but is not obligated to, deliver to the other Party a notice of a potential Unplanned Revenue Impacting Facility at any time from and after the selection thereof as the preferred alternative under a NEPA decision or local project decision and prior to opening of the potential Unplanned Revenue Impacting Facility to traffic. If TxDOT provides such a notice, TxDOT shall include in it, to the extent available or known to TxDOT, (a) a reasonable description of the Unplanned Revenue Impacting Facility, including any right of way alignments, number of lanes, location and other pertinent features, (b) a statement whether the Unplanned Revenue Impacting Facility will be tolled, and, if so, the intended tolling requirements, including, if applicable, toll rate schedule by vehicle classification, and (c) any traffic and revenue studies and analyses that constitute public information under the Public Information Act available to TxDOT for the potential Unplanned Revenue Impacting Facility. If Developer provides such notice, then within 30 days after TxDOT receives the notice it shall deliver to Developer either the foregoing documentation (to the extent available or known to TxDOT) or a notice that commencement of procedures under this Section 11.3.2.2 is premature because there is no reasonable expectation of commencing construction of the potential Unplanned Revenue Impacting Facility within the next two years. If TxDOT delivers notice that commencement of procedures is premature, Developer shall have the right to deliver a new notice of the potential Unplanned Revenue Impacting Facility no earlier than one year after its prior notice, in which case the foregoing provisions shall apply again.

11.3.2.3 Within 90 days after TxDOT delivers to Developer the documentation described in Section 11.3.2.2, Developer shall deliver to TxDOT a written notice of Claim stating whether Developer believes the potential Unplanned Revenue Impacting Facility will have an adverse effect on the amount of Toll Revenues and, if so, a true and complete copy of a preliminary traffic and revenue study and analysis showing the projected effects and a reasonably detailed statement quantifying the adverse effect on Toll Revenues and the positive effect on costs. Such analysis and quantification shall include data

on past Toll Revenues and projected future Toll Revenues with and without the potential Unplanned Revenue Impacting Facility. At Developer's request within such 90-day period, TxDOT shall grant reasonable extensions of time for Developer to deliver the written notice of Claim, so long as Developer is making good faith, diligent progress in completing its traffic and revenue analysis and Toll Revenue impact analysis, provided that in no event shall TxDOT be obligated to grant extensions aggregating more than 60 days.

11.3.2.4 If for any reason Developer fails to deliver such written notice of Claim and related information within the foregoing time period (as it may be extended), Developer shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any adverse effect on Toll Revenues attributable to the construction, operation and use of the subject potential Unplanned Revenue Impacting Facility or any Unplanned Revenue Impacting Facility that is not substantially different from the potential Unplanned Revenue Impacting Facility. For this purpose, an Unplanned Revenue Impacting Facility ultimately constructed and operated shall be considered substantially different from the subject potential Unplanned Revenue Impacting Facility if (a) the route is substantially different, (b) the number of lanes is different, (c) the number of HOV, HOT, truck or other special purpose or restricted use lanes is different or their length is substantially different, (d) the total length is substantially different, (e) TxDOT stated in its written notice that the potential Unplanned Revenue Impacting Facility would be tolled and the actual Unplanned Revenue Impacting Facility is not tolled or is tolled at materially lower toll rates for the predominant classifications of vehicles than the rates described in TxDOT's notice (if applicable), (f) the means for collecting tolls is substantially different (e.g. barrier only vs. barrier-free or open lane tolling), (g) the number of access points to the Unplanned Revenue Impacting Facility is different or the design capacity of access points to the Unplanned Revenue Impacting Facility is substantially different or (h) there are other differences similar in scale or effect to the foregoing differences.

11.3.2.5 If Developer timely delivers its written notice of Claim and related information, then at TxDOT's request Developer shall engage in good faith, diligent negotiations with TxDOT to mutually determine and settle the Compensation Amount owing from TxDOT to Developer on account of the potential Unplanned Revenue Impacting Facility. As part of such negotiations, the Parties shall continue to refine and exchange, on an Open Book Basis, plans, drawings, configurations and other information on the potential Unplanned Revenue Impacting Facility, traffic and revenue data, information, analyses and studies, and financial modeling and quantifications of projected Toll Revenue loss, if any. At the request of either Party, the Parties shall engage a neutral facilitator to assist with the negotiations.

11.3.2.6 If, despite such good faith, diligent negotiations (including exchange of information on an Open Book Basis), the Parties are unable to agree upon the Compensation Amount within 90 days after commencement of such negotiations, then either Party may terminate the negotiations upon written notice to the other Party. If the Parties are successful in the negotiations, they shall execute and deliver written agreements and, if necessary, amendments to this Agreement, setting forth all the terms and conditions of the settlement, which shall thereafter be final and binding and constitute a full settlement and release of any and all Claims, causes of action, suits, demands and Losses of Developer arising out of the Unplanned Revenue Impacting Facility or any similar substitute Unplanned Revenue Impacting Facility. Neither Party thereafter shall have the right to rescind or cancel the settlement for any reason, including differences between the amounts of actual future Toll Revenues and the amounts that were previously projected.

11.3.2.7 If any Unplanned Revenue Impacting Facility is opened for traffic operations and is not the subject of compensation settlement under Section 11.3.2.6 or upon opening is substantially different from the Unplanned Revenue Impacting Facility that is the subject of compensation settlement (as described in Section 11.3.2.4), then Developer shall be entitled to pursue its Claim for the Compensation Amount on and subject to the following terms and conditions:

(a) Developer shall have a period of up to four years following the opening for traffic operations of the Unplanned Revenue Impacting Facility to make a Claim for the Compensation Amount (which may include both past and future adverse effects on the amount of Toll Revenues). Developer shall make a Claim by delivering to TxDOT written notice of the Claim together with the same related information and materials as described in Section 11.3.2.3. The written notice shall state the claimed Compensation Amount and Developer's proposed Base Case Financial Model Update. If for any reason Developer fails to deliver such written notice of Claim and related information within the foregoing time period, Developer shall be deemed to have irrevocably and forever waived and released any Claim or other right to compensation for any adverse effect, past or future, on Toll Revenues attributable to the Unplanned Revenue Impacting Facility.

(b) If Developer timely delivers its written notice of Claim and related information, then at TxDOT's request, Developer shall deliver to TxDOT, on an Open Book Basis, any other information, studies, analyses and documentation used by or available to Developer in support of its Claim or otherwise relevant to the determination of the Compensation Amount (if any), and the Parties shall seek to settle the Claim in good faith. Any unresolved Dispute regarding whether Developer is entitled to any compensation and the amount thereof shall be resolved according to the Dispute Resolution Procedures.

(c) Developer shall bear the burden of proving the Claim.

11.3.2.8 If any Unplanned Revenue Impacting Facility for which compensation is paid or payable pursuant to Section 11.3.2.6 or Section 11.3.2.7 is modified physically or operationally after opening for traffic operations so that it is substantially different from the original Unplanned Revenue Impacting Facility (as described in Section 11.3.2.4) and as a result thereof Developer experiences a further adverse effect on the amount of Toll Revenues, then Developer shall be entitled to further compensation for such impact, offset by any further gain in Toll Revenues, if any, attributable to other future additions or expansions of access points to the Managed Lanes by TxDOT or a Governmental Entity that are not included as part of the Work and that are in operation at the time Developer first delivers its Claim for further compensation to TxDOT. The foregoing right to further compensation shall be subject to the same terms and conditions as set forth in Section 11.3.2.7, with the deadline for making a Claim running from the date the changes in the original Unplanned Revenue Impacting Facility are substantially completed.

11.3.3 Waiver of Rights and Remedies Regarding Unplanned Revenue Impacting Facilities

Developer acknowledges that TxDOT has a paramount public interest and duty to develop and operate whatever transportation facilities it deems to be in the best interests of the State, and that the compensation to which Developer is entitled on account of Unplanned Revenue Impacting Facilities is a fair and adequate remedy. Accordingly, Developer shall not have, and irrevocably waives and relinquishes, any and all rights to institute, seek or obtain any

injunctive relief or pursue any action, order or decree to restrain, preclude, prohibit or interfere with TxDOT's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, rehabilitate, restore, renew or replace any Unplanned Revenue Impacting Facilities; provided, however, that the foregoing shall not preclude Developer from enforcing its rights to compensation regarding Unplanned Revenue Impacting Facilities under Section 11.3.2 (or rights to compensation regarding other Compensation Events). The filing of any such action seeking to restrain preclude, prohibit or interfere with TxDOT's rights shall automatically entitle TxDOT to recover all costs and expenses, including attorneys' fees, of defending such action and any appeals.

11.3.4 Positive Impact of Unplanned Revenue Impacting Facilities

If it is determined that operation of an Unplanned Revenue Impacting Facility will have a net positive impact to Developer, whether through increased Toll Revenues to Developer, decreased operating and maintenance costs, or an increase in Toll Revenues net of increased operating and maintenance costs, TxDOT shall be entitled to receive from Developer the full positive financial impact attributable to such Unplanned Revenue Impacting Facility (if any). Any Dispute regarding such amount shall be resolved according to the Dispute Resolution Procedures. For the purpose of any discounting, the provisions of Section 13.2.4.3 shall apply.

ARTICLE 12. UPGRADES, TECHNOLOGY ENHANCEMENTS AND SAFETY COMPLIANCE

12.1 Upgrades and Technology Enhancements

12.1.1 Capacity Improvements

The terms and conditions for development of Capacity Improvements are set forth in Exhibits 7 and 16 and Section 14.1.4.

12.1.2 Facility Extensions

12.1.2.1 Developer shall be obligated to add a Facility Extension as and when provided in Exhibit 16. Developer shall have no right to add a Facility Extension unless expressly provided otherwise in Exhibit 16. Responsibility for the cost of Facility Extensions is set forth in Exhibit 16.

12.1.2.2 Except to the extent otherwise provided in Section 12.1.2.3 and Exhibit 16, all the provisions of the FA Documents concerning permitting, Facility Right of Way acquisition, design, construction, insurance, Utility Adjustments, Substantial Completion, Service Commencement, Final Acceptance, tolling, operation, maintenance, Renewal Work and Handback Requirements for the Facility shall apply, *mutatis mutandis*, to Facility Extensions; provided that the Technical Provisions and Technical Documents in effect on the date Developer first submits to TxDOT and the Independent Engineer preliminary designs and drawings for a Facility Extension shall apply to the design and construction of the Facility Extension.

12.1.2.3 Before Developer enters into any design-build or other contract for the construction of a Facility Extension, it shall submit to TxDOT and the Independent Engineer a proposed reasonable, logic-driven preliminary schedule for performing and completing the Facility Extension, deadlines for Service Commencement and Final

Acceptance, per diem liquidated damages to TxDOT for failure to achieve the deadline for Service Commencement or Final Acceptance, a Long Stop Date and proposed amounts of Payment and Performance Bonds. Such schedule, the deadlines for Service Commencement and Final Acceptance, the liquidated damages, the Long Stop Date and the amounts of the Payment and Performance Bonds shall be subject to review, analysis and recommendation by the Independent Engineer and to TxDOT's prior written approval; and any Dispute regarding the same shall be resolved according to the Dispute Resolution Procedures. The proposed amounts of Payment and Performance Bonds shall be consistent with Section 16.2 and Exhibit 31. The opinion of the Independent Engineer shall be given substantial weight in resolving any Dispute, except with respect to the appropriate measure of liquidated damages and amount of Payment and Performance Bonds.

12.1.3 Technology Enhancements

Except as provided otherwise in Exhibit 16, Developer at its expense shall be obligated to make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects, (b) under the Renewal Work Schedule or (c) to maintain interoperability in accordance with Section 8.7.2 and Section 8.7.3 and other applicable provisions of the FA Documents.

12.2 [RESERVED]

12.3 Discretionary Upgrades

12.3.1 Developer shall have the right to propose Capacity Improvements that are not pursued by TxDOT pursuant to Section 12.1 or 14.1.1.3. Any such proposed Capacity Improvements shall be treated as a Change Request subject to Section 14.2. Developer may initiate request for approval of such a Capacity Improvement by submitting to TxDOT and the Independent Engineer a Change Request setting forth all the relevant particulars supporting the request, including sources and method of financing. Any approved Capacity Improvement shall comply with the Technical Provisions and Technical Documents in effect as of the date TxDOT issues its approval. To the extent proposed Capacity Improvements require further environmental review under NEPA, Developer shall provide all needed studies and analyses and shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, that TxDOT incurs in connection with the NEPA process and any litigation arising therefrom.

12.3.2 Except for Facility Extensions pursuant to Section 14.1.1.3, Developer shall have no right to, and shall not, construct any Facility Extension without TxDOT's prior written approval in its sole discretion. Developer may initiate request for approval of a discretionary Facility Extension by submitting to TxDOT and the Independent Engineer a Change Request setting forth all the relevant particulars supporting the request, including sources and method of financing. Any approved discretionary Facility Extension shall comply with the Technical Provisions and Technical Documents in effect as of the date TxDOT issues its approval. If any proposed discretionary Facility Extension requires further environmental review under NEPA, Developer shall reimburse TxDOT for all costs, including TxDOT's Recoverable Costs, it incurs in connection with the NEPA process, including litigation costs.

12.4 Safety Compliance

12.4.1 Safety Compliance Orders

12.4.1.1 TxDOT shall use good faith efforts to inform Developer at the earliest practicable time of any circumstance or information relating to the Facility which in TxDOT's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of Emergency, TxDOT shall consult with Developer and the Independent Engineer prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the Safety Compliance work.

12.4.1.2 The Independent Engineer's duties shall include monitoring and inspecting for the purpose of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order, and giving reports and recommendations to TxDOT and Developer with respect thereto.

12.4.1.3 Subject to conducting such prior consultation, TxDOT may issue Safety Compliance Orders to Developer at any time from and after the Effective Date.

12.4.2 Duty to Comply

12.4.2.1 Subject to Section 12.4.1, Developer shall implement all Safety Compliance as expeditiously as reasonably possible following issuance of the Safety Compliance Order. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion.

12.4.2.2 Developer shall perform all work required to implement Safety Compliance at Developer's sole cost and expense. Without limiting the foregoing and for the avoidance of doubt, in no event shall Developer be entitled to (a) issue a Change Request or, except as provided in Section 12.4.3, claim that a Compensation Event has occurred as a result of the existence of a Safety Compliance Order, (b) claim that a Force Majeure Event, Extended Relief Event or, except as provided in Section 12.4.3, that a Relief Event has occurred or resulted from the existence of a Safety Compliance Order or (c) in the absence of any agreement to the contrary, claim that any Force Majeure Event, Relief Event or Extended Relief Event relieves Developer from compliance with any Safety Compliance Order.

12.4.3 Contesting Safety Compliance Orders

Developer may contest a Safety Compliance Order by delivering to TxDOT written notice setting forth (a) Developer's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order, (b) Developer's explanation of its claim in reasonable detail and (c) Developer's estimate of impacts on costs, Toll Revenues and schedule attributable to the contested Safety Compliance Order. If TxDOT does not receive such written notice prior to issuance of a Safety Compliance Order, or within 15 days after TxDOT issues an emergency Safety Compliance Order, then Developer thereafter shall have no right to contest. If Developer timely contests a Safety Compliance Order, Developer nevertheless shall implement the Safety Compliance Order, but if it is finally determined under the Dispute Resolution Procedures that Safety Compliance conditions did not exist, then the Safety Compliance Order shall be treated as a Directive Letter for a TxDOT Change.

ARTICLE 13. RELIEF EVENTS; COMPENSATION EVENTS

13.1 Relief Events

13.1.1 Relief Event Notice

13.1.1.1 If at any time Developer determines that a Relief Event has occurred or is imminent, Developer shall submit a written Relief Event Notice to TxDOT. TxDOT shall promptly acknowledge receipt of each Relief Event Notice.

13.1.1.2 The Relief Event Notice shall include (a) a statement of the Relief Event upon which the claim of delay or inability to perform is based; (b) to the extent then known, a reasonably detailed description of the circumstances from which the delay or inability to perform arises; and (c) an estimate of the delay in performance of any obligations under this Agreement attributable to the Relief Event. If a single Relief Event is a continuing cause of delay, only one Relief Event Notice shall be necessary.

13.1.2 Relief Request

13.1.2.1 Developer shall, within a further 30 days after the date of the Relief Event Notice, submit to TxDOT a Relief Request containing such further information as is then available to Developer relating to the Relief Event, and any delay in performance or failure to perform. TxDOT shall promptly acknowledge receipt of each Relief Request. Developer shall include in the Relief Request the following:

(a) Full details of the Relief Event, including its nature, the date of its occurrence and its duration;

(b) The effect of the Relief Event on Developer's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation, an impacted delay analysis indicating all affected activities on any Critical Path (with activity durations, predecessor and successor activities and resources, including Float available pursuant to Section 7.7.6), and the likely duration of that effect; and

(c) An explanation of the measures that Developer proposes to undertake to mitigate the delay and other consequences of the Relief Event.

13.1.2.2 If, following issuance of any Relief Request, Developer receives or becomes aware of any further information relating to the Relief Event and/or any delay in performance or failure to perform, it shall submit such further information to TxDOT as soon as possible. TxDOT may request from Developer any further information that TxDOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

13.1.3 Waiver

Time is of the essence in Developer's delivery of its written Relief Event Notice and Relief Request. Accordingly:

13.1.3.1 If for any reason Developer fails to deliver such written Relief Event Notice:

(a) Within 30 days following the date (herein the “starting date”) on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the Relief Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief (including extension of the Term) for adverse effect attributable to the Relief Event accruing after such 30-day deadline and until the date Developer submits the written Relief Event Notice; and

(b) Within 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event; and

13.1.3.2 If for any reason Developer fails to deliver such written Relief Request within 30 days after the date of the Relief Event Notice, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event.

13.1.4 Extension of Lease Term for Certain Relief Events

13.1.4.1 Developer shall be entitled to an extension of the term of the Lease in (and only in) the following circumstances:

(a) Developer submits its Relief Event Notice and Relief Request within the applicable time periods;

(b) The Relief Event causes delay in performance that continues for a consecutive period of at least 180 days, or there occurs a cumulative period of delay in performance of at least 180 days in any consecutive 36-month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least 60 days each (and for these purposes there shall not be counted any time period of delay in performance between 30 days after the starting date and the date Developer submits the written Relief Event Notice);

(c) The Relief Event is not also a Compensation Event; and

(d) The Relief Event adversely affects the collection of Toll Revenues (of the type described in clauses (a) through (d) of the definition of Toll Revenues) or increases Developer’s costs that are not insured and not required to be insured under this Agreement.

13.1.4.2 Any extension of the term of the Lease shall be limited to the extra period of time reasonably required to recover from the impact of the loss of Toll Revenues (of the type described in clauses (a) through (d) of the definition of Toll Revenues), and the impact of the increase in uninsurable and non-reimbursable costs attributable to such Relief Event, minus any cost savings realized by the Developer due to such Relief Event, provided that under no circumstances shall the cumulative extensions of the term of the Lease under this Section 13.1.4 exceed ten years or the maximum extension then possible under applicable Laws, whichever is less. For the purpose of determining impacts and the length of the term of the Lease extension, the Parties shall use the same present value methodology for calculating

the weighted average cost of capital and the value of future Toll Revenues as incorporated into the Base Case Financial Model Update.

13.1.4.3 In addition to providing information pursuant to Section 13.1.2.2, Developer shall deliver to TxDOT a written notice and analysis within 30 days after occurrence of cumulative periods of delay due to Relief Events that Developer determines entitle it to an extension of the term of the Lease under this Section 13.1.4 (a "Relief Request update"). The Relief Request update shall state such facts and the expected period that the Relief Event(s) will continue, include an update of the information described in Section 13.1.2.1, and include a financial analysis of the period of term of the Lease extension necessary to recover the impacts set forth in Section 13.1.4.2. Developer shall provide further Relief Request updates monthly until the subject Relief Event(s) ceases.

13.1.5 Relief Event Determination

13.1.5.1 If Developer complies with the notice and information requirements in Sections 13.1 and 13.2, then within 30 days after receiving the Relief Event Notice and Relief Request (and, if applicable a final Relief Request update) TxDOT, acting reasonably and with consideration given to recommendations made by the Independent Engineer, shall issue a Relief Event Determination. TxDOT shall specify in the Relief Event Determination (a) the relevant obligations for which relief is given, (b) the period of time Facility Schedule or Milestone Schedule deadlines will be extended based on the number of days of delay affecting a Critical Path, after consumption of Float available pursuant to Section 7.7.6, that is directly attributable to the Relief Event and that cannot be avoided through reasonable mitigation measures and (c) if applicable, the period of time, if any, that the Term will be extended. Developer shall be relieved from the performance of obligations to the extent specified in the Relief Event Determination, and Noncompliance Points shall not be assessed against Developer as a result of inability to perform its obligations due solely and directly to, and during, the Relief Event period.

13.1.5.2 Developer shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event. Developer shall not be excused from compliance with applicable Laws, Technical Provisions or Technical Documents due to the occurrence of a Relief Event, except temporary inability to comply as a direct result of a Relief Event.

13.1.5.3 If TxDOT is obligated to but does not provide a Relief Event Determination within such 30-day period, Developer shall have the right to assert a Claim against TxDOT for the relevant Relief Event and have such Claim determined according to the Dispute Resolution Procedures. Any Dispute regarding the occurrence of a Relief Event, the terms of the Relief Event Determination or waiver of Developer's Claim or right to relief shall be resolved according to the Dispute Resolution Procedures.

13.2 Compensation Events; Determination of Compensation Amount

13.2.1 Except as otherwise provided in this Agreement, if at any time Developer determines that a Compensation Event has occurred or is imminent, Developer shall submit a written Compensation Event Notice to TxDOT. The Compensation Event Notice shall identify the Compensation Event and its date of occurrence in reasonable detail, describe Developer's current estimate of the anticipated adverse and beneficial effects of the Compensation Event, and include written analysis and calculation of Developer's current estimate of the estimated

increase or decrease in costs and estimated loss of or increase in Toll Revenues, to the extent applicable to the Compensation Event.

13.2.2 Time is of the essence in Developer's delivery of its written Compensation Event Notice. Accordingly, if for any reason Developer fails to deliver such written Compensation Event Notice:

13.2.2.1 Within 60 days following the date (herein the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the occurrence of such Compensation Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to compensation for adverse effect on Toll Revenues and costs attributable to such Compensation Event accruing after such 60-day deadline and until the date Developer submits the written Compensation Event Notice; and

13.2.2.2 Within 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to compensation for any adverse effect on Toll Revenues or costs attributable to such Compensation Event.

13.2.3 TxDOT shall promptly acknowledge receipt of each Compensation Event Notice and update. After receiving Developer's Compensation Event Notice, TxDOT shall be entitled to obtain (a) from the Independent Engineer a comprehensive report as to Developer's estimate of the reasonable and documented cost impacts attributable to the Compensation Event and (b) from a traffic and revenue consultant TxDOT selects, a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impact on Toll Revenues attributable to the Compensation Event. Within 90 days after receiving Developer's Compensation Event Notice, TxDOT shall provide to Developer a true and complete copy of the traffic and revenue study and the report prepared by the Independent Engineer. If Developer complies with the notice and information requirements in Sections 13.2.1 and 13.2.2, but TxDOT does not provide Developer copies of such study and report within such 90-day period, then Developer shall have the right to assert a Claim against TxDOT for the relevant Compensation Amount (if any) and have such Claim determined according to the Dispute Resolution Procedures.

13.2.4 If Developer complies with the notice and information requirements in Sections 13.2.1 and 13.2.2, then within 30 days after TxDOT and Developer receive the report and study from the Independent Engineer and traffic and revenue consultant, TxDOT and Developer shall commence good faith negotiations to determine the Compensation Amount, if any, to which Developer is entitled. If Developer stands ready to commence good faith negotiations to determine the Compensation Amount within the foregoing time period but for any reason TxDOT does not commence to engage therein within the foregoing time period, then, subject to compliance with the notice and information requirements in Sections 13.2.1 and 13.2.2, Developer shall have the right to assert a Claim against TxDOT for the relevant Compensation Amount (if any) and have such Claim determined according to the Dispute Resolution Procedures. The Compensation Amount shall be determined by applying the following provisions.

13.2.4.1 Cost impacts shall:

- (a) Exclude (i) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of TxDOT in the regular course of business, and (ii) unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);
- (b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;
- (c) Exclude those costs incurred in asserting, pursuing or enforcing any Claim or Dispute;
- (d) Take into account any savings in costs resulting from the Compensation Event; and
- (e) Be subject to Developer's obligation to mitigate cost increases and augment cost decreases in accordance with Section 13.3.

13.2.4.2 Toll Revenue impacts shall:

- (a) Take into account any increase in Toll Revenue attributable to the Compensation Event; and
- (b) Be subject to Developer's obligation to mitigate loss of Toll Revenues in accordance with Section 13.3.

13.2.4.3 For the purpose of any discounting, the Parties shall use the same present value methodology for calculating the weighted average cost of capital as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model).

13.2.4.4 In all cases the Compensation Amount shall be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 16.1.4.3, with respect to cost or revenue impacts of the Compensation Event.

13.2.4.5 If the Compensation Amount includes amounts subject to federal income tax or State margin tax and TxDOT chooses under Section 13.2.9 to pay any portion of such taxable amounts in a lump sum, then the Compensation Amount shall also include, and TxDOT shall pay, the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for income tax purposes, its members or partners) or State margin tax liability of Developer due to such lump sum payment over the Base Tax Liability. TxDOT shall pay such amount within 30 days after

Developer delivers to TxDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability. The Compensation Amount shall not include, and TxDOT shall have no liability for, any incremental increase in federal income tax and margin tax liability where the Compensation Amount is paid in quarterly or other periodic payments.

13.2.5 If, following issuance of any Compensation Event Notice and during the period of analysis and negotiation under Sections 13.2.3 and 13.2.4, Developer receives or becomes aware of any further information relating to the Compensation Event and/or actual or anticipated adverse and beneficial effects thereof, it shall submit such further information to TxDOT and the Independent Engineer as soon as possible. TxDOT may request from Developer any further information that TxDOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

13.2.6 If the Compensation Event is:

13.2.6.1 Under clause (s) of the definition of Compensation Event, then:

(a) To the extent that Developer is in any way responsible for TxDOT's failure to achieve TxDOT Substantial Completion by the Original Expected TxDOT Substantial Completion Date, the Compensation Amount payable with respect to such Compensation Event shall exclude such portion thereof as is determined by mutual agreement or the Dispute Resolution Procedures to be the result of Developer's proportionate responsibility for the delay, if any;

(b) For the period of delay ("such period of delay") between the Original Expected TxDOT Substantial Completion Date and the earliest of (x) the TxDOT Substantial Completion Date as confirmed by the Independent Engineer, (y) the Expected TxDOT Substantial Completion Date or (z) (I) if no partial termination takes effect pursuant to Section 19.14, 105 days after the Original Long Stop Date for TxDOT Substantial Completion, or (II) if partial termination takes effect pursuant to Section 19.14, the Original Long Stop Date for TxDOT Substantial Completion, the Compensation Amount shall be limited to the following, as adjusted pursuant to clause (a) above and subject to the further limits under clauses (d) below:

(i) Amounts expended out of or pursuant to any reserve account, letter of credit or other credit support or collateral that is established for the purpose of satisfying Developer contractual obligations that (A) are related to the Facility, (B) are not owing to Contractors or Affiliates, (C) accrue during such period of delay, and (D) are due and payable not later than six months after the end of such period of delay; provided that such expended amounts (I) are only for such Developer contractual obligations, and (II) are required solely due to the loss of Toll Revenues directly attributable to the delay in the development of the Segment 3B Facility Segment. (The use of any amounts available to Developer other than those on deposit in or funds from the reserve account, letter of credit or other credit support or collateral for the purpose of making any payments as described above in respect of the purposes for which any reserve account, letter of credit or other credit support or collateral is established and maintained shall be deemed to be a use of the funds thereof (or related thereto) for which compensation is contemplated and provided for under this clause (b)(i)); plus

(ii) Any costs Developer (or any Affiliate thereof that funded any of the amounts or provided or made available any reserve account, letter of credit or other

credit support or collateral contemplated in clause (i) above provided the Affiliate incurs such costs on the same or more attractive terms than available to Developer) incurs during such period of delay, including those accrued during such period of delay that become due and payable not later than six months after the end of such period of delay, in connection with the establishment and maintenance of (but not draws upon or replenishments that are covered in clause (b)(i) above) any reserve account, letter of credit or any other credit support or collateral established as described in clause (b)(i) and any such costs related to the funding of any amounts funded under clause (b)(i) above, provided that such costs are at prevailing market prices; minus

(iii) The excess, if any, of actual Toll Revenues for the Segment 3B Facility Segment received by Developer in respect of Transactions occurring during such period of delay, including such Toll Revenues received after such period of delay, over the costs of O&M Work for the Segment 3B Facility Segment incurred during such period of delay;

(c) For the further period of delay ("such further period of delay"), if any, between the Expected TxDOT Substantial Completion Date and (x) if no partial termination takes effect pursuant to Section 19.14, the earlier of (I) the TxDOT Substantial Completion Date as confirmed by the Independent Engineer or (II) 105 days after the Original Long Stop Date for TxDOT Substantial Completion or (y) if partial termination takes effect pursuant to Section 19.14, the Original Long Stop Date for TxDOT Substantial Completion (without regard to any difference between this date and the effective date of the partial termination), the Compensation Amount shall equal the following, as adjusted pursuant to clause (a) above and subject to the further limits under clauses (d) below:

(i) Toll Revenue loss minus the avoided costs of O&M Work, calculated by reference to the projected Toll Revenues and the projected operations and maintenance costs attributable to the Segment 3B Facility Segment as contained in the Base Case Financial Model as of the Recalibration Date for the length of such further period of delay; plus

(ii) Any costs Developer (or any Affiliate thereof that funded any of the amounts or provided or made available any reserve account, letter of credit or other credit support or collateral contemplated in clause (i) above provided the Affiliate incurs such costs on the same or more attractive terms than available to Developer) incurs during such period of delay, including those accrued during such further period of delay that become due and payable not later than six months after the end of such period of delay, in connection with the establishment and maintenance of (but not the draws upon or replenishments that are covered in clause (b)(i) above) any reserve account, letter of credit or any other credit support or collateral that is established as described in clause (b)(i) above and any such costs related to any amounts funded as contemplated under clause (b)(i) above, provided that such costs are at prevailing market prices; minus

(iii) The excess, if any, of actual Toll Revenues for the Segment 3B Facility Segment received by Developer in respect of Transactions occurring during such further period of delay, including such Toll Revenues received after such further period of delay, the costs of O&M Work for the Segment 3B Facility Segment incurred during the same period;

(d) The sum of the amounts under clauses (b)(i) and (c)(i) above, and the aggregate principal amount of any reserve account, letter of credit, other credit support or collateral as described in clause (b)(i) above, in no event shall exceed the projected Toll Revenues attributable to the Segment 3B Facility Segment for the period of time commencing on the Original Expected TxDOT Substantial Completion Date and ending on the Original Long Stop Date for TxDOT Substantial Completion plus 105 days, as determined in the Base Case Financial Model as of the Recalibration Date;

(e) The sum of the amounts under clauses (b)(ii) and (c)(ii) above in no event shall exceed an amount equal to 15% of the amount calculated under clause (d) above multiplied by a fraction the numerator of which is the number of days for which compensation is due under such clauses and the denominator of which is 365 days; and

(f) Any Compensation Amount under this Section 13.2.6.1 shall be calculated and be due and payable at the conclusion of the period of delay as set forth in clause (b) or such further period of delay as set forth in clause (c) of this Section 13.2.6.1, whichever is applicable;

13.2.6.2 Under clause (f) of the definition of Compensation Event, then the Compensation Amount shall be limited as set forth in Section 11.2.4;

13.2.6.3 Under clause (h) of the definition of Compensation Event, then the Compensation Amount shall be limited to that set forth in Section 3.4.3;

13.2.6.4 Under clause (j) of the definition of Compensation Event, then the Compensation Amount shall be limited to the reasonable and documented incremental increase in costs of initial design and construction due to delay and disruption directly attributable to the court order, plus interest on Facility Debt other than Subordinate Debt for the period of delay in initial design and construction directly attributable to the court order, plus the loss of Toll Revenues directly attributable to a court order prohibiting imposition of tolls during a time period when Developer otherwise would be charging tolls under this Agreement minus the associated operations and maintenance costs, and shall not include any compensation for any other impacts;

13.2.6.5 A Pre-Recalibration Third Party Compensation Event included in the Base Case Financial Model as of the Recalibration Date, the Compensation Amount payable in respect thereof shall be as set forth in such Base Case Financial Model as of such Recalibration Date in accordance with Section 4.1.4.5. With respect to any Pre-Recalibration Third Party Compensation Event not included in the Base Case Financial Model, Developer shall have no right to any Compensation Amount;

13.2.6.6 Under clause (p) of the definition of Compensation Event, then the Compensation Amount shall be limited to any reasonable and documented increase in the lump-sum fixed price for the Construction Work payable pursuant to the Design-Build Contract in effect at Financial Close attributable to the period of delay under clause (p) of the definition of Compensation Event, but only if such Design-Build Contract contains a formula for lump sum escalation that is uniformly applicable to all reasons or causes for delay in Financial Close (other than due to the Design-Build Contractor's acts or omissions);

13.2.6.7 A Change Order for a TxDOT Change needed in the event the conditions and requirements of an agreement with the Operating Railroad do not allow the

construction of the Facility at the Hodge Yard Crossing as set forth in Section 14.2.1 and Attachment 14-2 of Book 2, but that allow the construction of the Facility at the Hodge Yard Crossing as set forth in Section 14.2.1.1 and Attachment 14-3 of Book 2, then the Compensation Amount shall not exceed the lesser of (a) the actual, reasonable costs incurred by Developer to meet the conditions and requirements of the Operating Railroad, minus the costs Developer would incur to meet conditions and requirements of an agreement with the Operating Railroad that would allow construction of the Facility at the Hodge Yard Crossing as set forth in Section 14.2.1 and Attachment 14-2 of Book 2, or (b) \$11 million;

13.2.6.8 A Change Order for a TxDOT Change needed in the event the conditions and requirements of an agreement with the Operating Railroad do not allow the construction of the Facility at the Hodge Yard Crossing as set forth in Section 14.2.1 and Attachment 14-2 of Book 2 or Section 14.2.1.1 and Attachment 14-3 of Book 2, then the Compensation Amount shall not exceed the lesser of (a) the actual, reasonable costs incurred by Developer to meet the conditions and requirements of the Operating Railroad, minus the costs Developer would incur to meet conditions and requirements of an agreement with the Operating Railroad that would allow construction of the Facility at the Hodge Yard Crossing as set forth in Section 14.2.1 and Attachment 14-2 of Book 2, or (b) \$16 million;

13.2.6.9 A Change Order for a TxDOT Change needed in the event the conditions and requirements of an agreement with the Operating Railroad do not allow the construction of the Facility at the Dooling Street Crossing as set forth in Section 14.2.2 and Attachment 14-4 of Book 2, then the Compensation Amount shall not exceed the lesser of (a) the actual, reasonable costs incurred by Developer to meet the conditions and requirements of the Operating Railroad, minus the costs Developer would incur to meet conditions and requirements of an agreement with the Operating Railroad that would allow construction of the Facility at the Dooling Street Crossing as set forth in Section 14.2.2 and Attachment 14-4 of Book 2, or (b) \$2 million;

13.2.6.10 A Change Order for a TxDOT Change needed in the event the conditions and requirements of the Section 408 Permit do not allow the construction of the bridge spans and bent locations of the Facility at the Trinity River crossing as set forth in Section 13.2.4.1.1.1 and Attachment 13-1 of Book 2, but do allow the construction of the bridge spans and bent locations of the Facility at the Trinity River crossing as set forth in Section 13.2.4.1.1.2 of Book 2, then the Compensation Amount shall not exceed the lesser of (a) the actual, reasonable costs incurred by Developer to meet the conditions and requirements of the Section 408 Permit, minus the costs Developer would incur to meet conditions and requirements of the Section 408 Permit that would allow construction of the Facility at the Trinity River crossing as set forth in Section 13.2.4.1.1.1 and Attachment 13-1 of Book 2 or (b) \$11.5 million;

13.2.6.11 A Change Order for a TxDOT Change needed in the event the conditions and requirements of the Section 408 Permit do not allow the construction of the bridge spans and bent locations of the Facility at the Trinity River crossing as set forth in Section 13.2.4.1.1.1 and Attachment 13-1 of Book 2 or Section 13.2.4.1.1.2 of Book 2, then the Compensation Amount shall not exceed the actual, reasonable costs incurred by Developer to meet the conditions and requirements of the Section 408 Permit, minus the costs Developer would incur to meet the conditions and requirements of the Section 408 Permit that would allow construction of the Facility at the Trinity River crossing as set forth in Section 13.2.4.1.1.1 and Attachment 13-1 of Book 2.

13.2.6.12 A Change Order for a TxDOT Change needed in the event the conditions and requirements of the Section 408 Permit require the construction of a secant wall or other type of retaining wall at the Trinity River crossing as set forth in Section 13.2.4.1.2.2 of Book 2, then the Compensation Amount shall not exceed the lesser of (a) the actual, reasonable costs incurred by Developer to meet the conditions and requirements of the Section 408 Permit, minus the costs Developer would incur to meet the conditions and requirements of the Section 408 Permit without the construction of a secant wall or other type of retaining wall at the Trinity River crossing as set forth in Section 13.2.4.1.2.1 of Book 2 or (b) \$2.1 million;

13.2.6.13 Under clause (q) of the definition of Compensation Event, then the Compensation Amount shall be limited solely to the cost and revenue impacts directly attributable to the TxDOT Works Defects and actions to repair the TxDOT Works Defects (without duplication of costs covered under Section 25.7.2.3); or

13.2.6.14 The development, use or operation of an Unplanned Revenue Impacting Facility, the Compensation Amount shall be as set forth in Section 11.3.2.1 and, if applicable, Section 11.3.2.8.

13.2.7 Developer shall conduct all discussions and negotiations to determine any Compensation Amount, and shall share with TxDOT all data, documents and information pertaining thereto, on an Open Book Basis.

13.2.8 If TxDOT and Developer are unable to agree on the Compensation Amount within 30 days after commencing good faith negotiations, or if Developer asserts a Claim against TxDOT for the Compensation Amount pursuant to Section 13.2.3 or 13.2.4, TxDOT shall prepare a good faith estimate of the Compensation Amount, and shall pay the full undisputed portion of the Compensation Amount to Developer within 30 days or in accordance with any other arrangement mutually agreed upon within such 30-day period. Any Dispute regarding occurrence of a Compensation Event, determination of the Compensation Amount or waiver of Developer's Claim or right to compensation shall be resolved according to the Dispute Resolution Procedures. The dispute resolution body(ies) shall apply the provisions of Section 13.2.4 in determining the Compensation Amount.

13.2.9 Following a determination of the Compensation Amount by mutual agreement or the Dispute Resolution Procedures and provided that the Compensation Event occurred subsequent to the Recalibration Date, except for Pre-Recalibration Third Party Compensation Events, TxDOT shall pay such Compensation Amount (a) through quarterly or other periodic payments of the Compensation Amount in accordance with a written payment schedule determined by mutual agreement or through the Dispute Resolution Procedures corresponding to when the cost and Toll Revenue impacts that make up the Compensation Amount are anticipated to occur, (b) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, (c) except as provided below, by adjustment to the revenue payment formula set forth in Part A of Exhibit 7 so as to make up all or any portion of the Compensation Amount, or (d) in such other manner as agreed upon by the Parties. TxDOT, in its sole discretion, shall be entitled to select one or any combination of the methods of compensation under clauses (a), (b) and (c) above, subject to the following terms and conditions.

13.2.9.1 No method may be chosen if it will not yield the amount necessary to restore Developer to the same economic position it would have been in if the Compensation Event had not occurred, except as specifically provided otherwise in this Agreement.

13.2.9.2 If any portion of the Compensation Amount is to pay for prior capital expenditures, TxDOT shall pay such portion in a lump sum, unless previously funded by Developer with non-callable Facility Debt or unless otherwise approved in writing by Developer.

13.2.9.3 If any portion of the Compensation Amount is to pay for costs of design or construction to be performed, or for other future capital expenditures, then TxDOT shall have no obligation to make advance payments and shall have the right to pay such portion of the Compensation Amount in quarterly progress payments in arrears and otherwise according to TxDOT's standard practices and procedures for paying its contractors and applicable Laws.

13.2.9.4 If any portion of the Compensation Amount is to pay for future non-capital costs or future Toll Revenue impacts, any periodic payments TxDOT chooses shall in no event be made less often than quarterly.

13.2.9.5 If TxDOT elects to make quarterly or other periodic payments, at any later time it may choose to complete compensation through a lump sum payment of the present value of the remaining Compensation Amount (plus any incremental federal income tax and State margin tax liability as provided in Section 13.2.4.5).

13.2.9.6 Any election by TxDOT to pay all or a portion of the Compensation Amount pursuant to Section 13.2.9(c) shall be subject to (a) determination that Developer will have the continuing ability to satisfy debt coverage ratios then binding on Developer under its Funding Agreements and Security Documents if such method is used, and (b) the ability of Developer, using diligent efforts, to raise additional Facility Debt or equity to the extent necessary to currently fund the cost impacts of the Compensation Event.

13.2.9.7 If any portion of the Compensation Amount is to pay for Compensation Event (s) pursuant to Section 13.2.6.1, TxDOT shall pay such portion in a lump sum within 20 Business Days after TxDOT Substantial Completion and the determination of the Compensation Amount pursuant to the terms hereof or the Dispute Resolution Procedures or as otherwise required in Exhibit 20.

13.2.9.8 If TxDOT does not make any lump sum or periodic payment of the Compensation Amount when due, it shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, until the date the amount due is paid; provided, however, that if any portion of the Compensation Amount is to pay for costs of design or construction to be performed or for other future capital expenditures, such portion shall bear interest in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

13.2.10 Without limiting Developer's rights with respect to non-monetary relief for Relief Events and Extended Relief Events, the Compensation Amount shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event. As a condition precedent to TxDOT's obligation to pay any portion of the Compensation Amount, Developer shall execute a full, unconditional, irrevocable release, in form reasonably acceptable to TxDOT, of any Claims, Losses or other rights to compensation or other monetary

relief associated with such Compensation Event, except for the Claim and right to the subject Compensation Amount, Developer's right to non-monetary relief for a Relief Event or Extended Relief Event, and the right to terminate this Agreement in accordance with Section 19.4 or Section 19.14 and to receive any applicable Termination Compensation due to pursuant to such Sections.

13.2.11 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update whenever there occurs a Compensation Event. TxDOT shall have the right to challenge, according to the Dispute Resolution Procedures, the validity, accuracy or reasonableness of any Base Case Financial Model Update or the related updated and revised assumptions and data. TxDOT shall have 60 days after receiving written notice from Developer that the Base Case Financial Model Update has been deposited in an Intellectual Property Escrow to commence action under the Dispute Resolution Procedures. In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged (or, if there has been no unchallenged Base Case Financial Model Update, the Base Case Financial Model) shall remain in effect pending the outcome of the challenge or until a new Base Case Financial Model Update is issued and unchallenged. In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

13.3 Mitigation

Developer shall take all steps reasonably necessary to mitigate the consequences of any Relief Event, Extended Relief Event or Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice.

13.4 TxDOT Relief Events

13.4.1 TxDOT Relief Event Notice

13.4.1.1 If at any time TxDOT determines that a TxDOT Relief Event has occurred or is imminent and may cause delay in achieving TxDOT Substantial Completion by the Expected TxDOT Substantial Completion Date, TxDOT shall submit a written TxDOT Relief Event Notice to Developer. Developer shall promptly acknowledge receipt of each TxDOT Relief Event Notice.

13.4.1.2 The TxDOT Relief Event Notice shall include (a) a statement of the TxDOT Relief Event upon which the claim of delay is based; (b) to the extent then known, a reasonably detailed description of the circumstances from which the delay arises; and (c) an estimate of the delay attributable to the TxDOT Relief Event. If a single TxDOT Relief Event is a continuing cause of delay, only one TxDOT Relief Event Notice shall be necessary.

13.4.2 TxDOT Relief Request

13.4.2.1 TxDOT shall, within a further 30 days after the date of the TxDOT Relief Event Notice, submit to Developer a TxDOT Relief Request containing such further information as is then available to TxDOT relating to the TxDOT Relief Event and any delay described in Section 13.4.1.1. Developer shall promptly acknowledge receipt of each TxDOT Relief Request. TxDOT shall include in the TxDOT Relief Request the following:

(a) Full details of the TxDOT Relief Event, including its nature, the date of its occurrence and its duration;

(b) The effect of the TxDOT Relief Event on TxDOT's ability to achieve TxDOT Substantial Completion by the Expected TxDOT Substantial Completion Date, including the precise effect on each such obligation, an impacted delay analysis indicating all affected activities on any critical path (with activity durations, predecessor and successor activities and resources, including available float in TxDOT's schedule), and the likely duration of that effect; and

(c) An explanation of the measures that TxDOT proposes to undertake to mitigate the delay and other consequences of the TxDOT Relief Event.

13.4.2.2 If, following issuance of any TxDOT Relief Request, TxDOT receives or becomes aware of any further information relating to the TxDOT Relief Event and/or any delay described in Section 13.4.1.1, it shall submit such further information to Developer as soon as possible. Developer may request from TxDOT any further information that Developer may reasonably require, and TxDOT shall supply the same within a reasonable period after such request.

13.4.3 Waiver

Time is of the essence in TxDOT's delivery of its written TxDOT Relief Event Notice and TxDOT Relief Request. Accordingly:

13.4.3.1 If for any reason TxDOT fails to deliver such written TxDOT Relief Event Notice:

(a) Within 30 days following the date (herein the "starting date") on which TxDOT first became aware (or should have been aware, using all reasonable due diligence) of the TxDOT Relief Event, TxDOT shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief for adverse effect attributable to the TxDOT Relief Event accruing after such 30-day deadline and until the date TxDOT submits the written TxDOT Relief Event Notice; and

(b) Within 180 days following the starting date, TxDOT shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such TxDOT Relief Event; and

13.4.3.2 If for any reason TxDOT fails to deliver such written TxDOT Relief Request within 30 days after the date of the TxDOT Relief Event Notice, TxDOT shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief for any adverse effect attributable to such TxDOT Relief Event.

13.4.4 Developer Relief Event Determination

13.4.4.1 If TxDOT complies with the notice and information requirements in Sections 13.4.1 and 13.4.2, then within 30 days after receiving the TxDOT Relief Event Notice and TxDOT Relief Request, Developer, acting reasonably and with consideration given to recommendations made by the Independent Engineer, shall issue a Developer Relief Event

Determination. Developer shall specify in the Developer Relief Event Determination (a) the relevant obligations for which relief is given and (b) the period of time the Expected TxDOT Substantial Completion Date will be extended based on the number of days of delay affecting a critical path, after consumption of available float in TxDOT's schedule, that is directly attributable to the TxDOT Relief Event and that cannot be avoided through reasonable mitigation measures. TxDOT shall be relieved from the foregoing deadlines and related obligations to the extent specified in the Developer Relief Event Determination.

13.4.4.2 TxDOT shall not be excused from compliance with its obligations under the FA Documents or with applicable Laws due to the occurrence of a TxDOT Relief Event, except temporary inability to comply as a direct result of a TxDOT Relief Event; provided that in no event shall a TxDOT Relief Event excuse TxDOT's obligations under Section 4.2.4.

13.4.4.3 If Developer is obligated to but does not provide a Developer Relief Event Determination within such 30-day period, TxDOT shall have the right to assert a Claim against Developer for the relevant TxDOT Relief Event and have such Claim determined according to the Dispute Resolution Procedures. Any Dispute regarding the occurrence of a TxDOT Relief Event, the terms of the Developer Relief Event Determination or waiver of TxDOT's Claim or right to relief shall be resolved according to the Dispute Resolution Procedures.

13.4.5 Mitigation

TxDOT shall take all steps reasonably necessary to mitigate the consequences of any TxDOT Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice.

ARTICLE 14. TXDOT CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

This Article 14 sets forth the requirements for obtaining all Change Orders under this Agreement. Developer hereby acknowledges and agrees that the assumptions contained in the Base Case Financial Model Update (3C) provide for full compensation for performance of all of the Work, subject only to those exceptions specified in this Article 14. Developer unconditionally and irrevocably waives the right to any claim for any monetary compensation or other relief in addition to that specifically provided under the terms of this Agreement, except in accordance with this Article 14. The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), equity, quantum meruit or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual mistake and frustration of purpose. Nothing in the Technical Provisions or Technical Documents shall have the intent or effect or shall be construed to create any right of Developer to any Change Order or other Claim for additional monetary compensation or other relief, any provision in the Technical Provisions or Technical Documents to the contrary notwithstanding.

14.1 TxDOT Changes

This Section 14.1 concerns (a) Change Orders unilaterally issued by TxDOT and (b) Change Orders issued by TxDOT following a Request for Change Proposal. For the avoidance of any doubt, this Section does not apply to the GP Capacity Improvements, the GTBR Capacity Improvement and the 3C Ultimate Capacity Improvement, which, as indicated in Part

A, Sections 1.1, 4.1 and 5.1 of Exhibit 16, are part of Developer's scope of Work under this Agreement and therefore not subject to the Request for Change Proposal or Change Order regime; provided that any TxDOT election to modify the scope of the GP Capacity Improvements, the scope of the GTBR Capacity Improvement, or the scope of the 3C Ultimate Capacity Improvement shall be governed by this Section 14.1.

14.1.1 TxDOT Right to Issue Change Order

14.1.1.1 TxDOT may, at any time and from time to time, without notice to any Lender or Surety, authorize and/or require, pursuant to a Change Order, changes in the Work, including additions or deletions, or in terms and conditions of the Technical Provisions or Technical Documents (including changes in the standards applicable to the Work); except TxDOT has no right to require any change that is not the subject of Section 14.1.1.3 and:

- (a) Is not in compliance with applicable Laws;
- (b) Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;
- (c) Constitutes a fundamental change in the nature or scope of the Facility;
- (d) Would cause an insured risk to become uninsurable;
- (e) Would materially adversely affect the health or safety of users of the Facility;
- (f) Is fundamentally incompatible with the Facility design; or
- (g) Is not technically feasible to construct.

14.1.1.2 Developer shall have no obligation to perform any work within any such exception unless on terms mutually acceptable to TxDOT and Developer.

14.1.1.3 Subject to Exhibit 16, TxDOT shall have the right at any time, at its option, without notice to any Lender or Surety, to issue a Change Order for Developer to undertake Upgrades, unilaterally or following a Request for Change Proposal. In such case, the pricing shall be determined as set forth in Section 14.1.3 and Part A, Section 2.4 of Exhibit 16.

14.1.1.4 If performance of any Change Order requires changes to the TxDOT Works in order to integrate the TxDOT Works to the Facility and the Related Transportation Facilities, TxDOT shall be responsible for all costs and expenses related to such changes to the TxDOT Works; provided that Developer shall be solely responsible for payment of any such costs and expenses incurred in connection with integrating the TxDOT Works with the Segment 3C Facility Segment.

14.1.2 Request for Change Proposal

14.1.2.1 If TxDOT desires to initiate a TxDOT Change or to evaluate whether to initiate such a change, then TxDOT may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed TxDOT Change.

14.1.2.2 Within five Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, TxDOT and Developer shall consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period to which the Parties may mutually agree, TxDOT and Developer shall consult concerning the estimated financial and schedule impacts.

14.1.3 Within 60 days following TxDOT's delivery to Developer of the Request for Change Proposal, Developer shall provide TxDOT with a written response as to whether, in Developer's opinion, the proposed change constitutes a TxDOT Change, will impact the Developer's costs or Toll Revenues and/or will impact the Developer's schedule, and if so, a detailed assessment of the cost, Toll Revenue and schedule impact of the proposed TxDOT Change, including the following:

14.1.3.1 Developer's detailed estimate of the impacts on costs and Toll Revenues of carrying out the proposed TxDOT Change;

14.1.3.2 If the Request for Change Proposal is issued prior to Final Acceptance, the effect of the proposed TxDOT Change on the applicable Facility Schedule and Milestone Schedule, including achievement of the Milestone Schedule Deadlines, taking into consideration Developer's duty to mitigate any delay to the extent reasonably practicable;

14.1.3.3 The effect (if any) of the proposed TxDOT Change upon traffic flow and traffic volume on the Facility during the Operating Period; and

14.1.3.4 Any other relevant information related to carrying out the proposed TxDOT Change.

14.1.4 TxDOT shall be entitled to obtain (a) from the Independent Engineer a comprehensive report as to the proposed TxDOT Change, including the Independent Engineer's comments concerning Developer's estimate of the cost impacts and projected impact on the Facility Schedule and Milestone Schedule, and (b) from a traffic and revenue consultant that Developer retains and TxDOT reasonably approves a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impacts on Toll Revenues. TxDOT shall pay for the work of the traffic and revenue consultant. Both Parties shall pay for the work of the Independent Engineer as provided in Section 9.3.1.5.

14.1.5 Following TxDOT's receipt of the Independent Engineer's report on the proposed TxDOT Change and the traffic and revenue consultant's study on the estimated impacts on Toll Revenues, TxDOT and Developer, giving due consideration to such report and study, shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including adjustment of the applicable Facility Schedule and Milestone Schedule Deadlines, any Compensation Amount to which Developer is entitled, and the timing and method for payment of any Compensation Amount, in accordance with Section 13.2.

14.1.6 If TxDOT and Developer are unable to reach agreement on a Change Order, TxDOT may, in its sole discretion, deliver to Developer a Directive Letter pursuant to Section 14.3.1 directing Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Change Order according to the Dispute Resolution Procedures, (a) Developer shall implement and perform the Work in question as directed by TxDOT and (b) TxDOT will make interim payment(s) to Developer on a monthly basis for the reasonable documented costs of the Work in question, subject to subsequent adjustment through the Dispute Resolution Procedures.

14.1.7 TxDOT shall be responsible for payment of the Compensation Amount agreed upon or determined through the Dispute Resolution Procedures, through one of the payment mechanisms set forth in Section 13.2.9, and the applicable Facility Schedule and Milestone Schedule shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with Section 13.1, to reflect the effects of the Change Order.

14.1.8 If TxDOT elects to apply to Developer during the period before the Service Commencement Date changes in the Technical Documents or Safety Standards and such changes have a material adverse impact on the Milestone Schedule or Developer's costs or Toll Revenues, such changes shall be considered TxDOT Changes and handled pursuant to the Change Order procedures in this Section 14.1. Developer shall implement changes to the Technical Documents or Safety Standards on or after the Service Commencement Date for a Facility Segment (other than Discriminatory Actions) at its sole cost and expense.

14.2 Developer Changes

14.2.1 Developer may request TxDOT to approve modifications to the Technical Provisions or Technical Documents by submittal of a written Change Request using a form approved by TxDOT. The Change Request shall set forth Developer's detailed estimate of impacts on costs, Toll Revenues and schedule attributable to the requested change.

14.2.2 TxDOT, in its sole discretion (and, if it so elects, after receiving a comprehensive report from the Independent Engineer regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer, provided that TxDOT will accept a Change Request necessary to bring the Technical Provisions or Technical Documents into compliance with applicable Law. TxDOT may condition its approval on new or a modification of compensation for TxDOT under this Agreement in order to share equally in the estimated net cost savings and revenue benefit, if any, attributable to the proposed change; provided that TxDOT shall not share in the first \$25 million of aggregate net cost savings and revenue benefit from approved Change Requests. If TxDOT accepts such change, Developer shall execute a Change Order and shall implement such change in accordance with all the Change Order, applicable Technical Provisions, Technical Documents, the Facility Management Plan, Good Industry Practice, and all applicable Laws.

14.2.3 Developer shall be solely responsible for payment of any increased costs, for any revenue losses and for any Facility Schedule and Milestone Schedule delays or other impacts resulting from a Change Request accepted by TxDOT. Without limiting the foregoing, if a Change Request accepted by TxDOT requires changes to the TxDOT Works in order to integrate the TxDOT Works to the Facility or Related Transportation Facilities, or causes delay or disruption of TxDOT's performance of the TxDOT Works, Developer shall compensate TxDOT for the reasonable and documented increase in costs attributable thereto, and TxDOT

shall be entitled to an extension of the Milestone Schedule Deadline for TxDOT Substantial Completion by the period of such delay.

14.2.4 Developer may implement and permit a Utility Owner to implement, without a Change Request or Change Order, changes to a Utility Adjustment design that do not vary from the Technical Provisions or Technical Documents, but such changes are subject either to TxDOT's approval as part of a Utility Assembly as provided in Section 6.3.4.5 of the Technical Provisions, or, if the changes are Utility Adjustment Field Modifications, to TxDOT's review and comment as provided in Section 6.4.7 of the Technical Provisions.

14.2.5 No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the FA Documents or applicable Law.

14.2.6 Certain minor changes without significant cost savings or revenue benefits may be approved in writing by TxDOT as Deviations, as described in Sections 7.2.3 and 8.1.2.10, and in such event shall not require a Change Order. Any other change in the requirements of the FA Documents shall require a Change Order.

14.3 Directive Letters

14.3.1 TxDOT may at any time issue a Directive Letter to Developer regarding any matter for which a Change Order can be issued or in the event of any Dispute regarding the scope of the Work or whether Developer has performed in accordance with the requirements of the FA Documents. The Directive Letter will state that it is issued under this Section 14.3, will describe the Work in question and will state the basis for determining compensation, if any. Subject to Section 14.1.7, 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 or is necessary to comply with the requirements of the FA Documents, Developer shall proceed with the Work as directed but shall have the right to assert a Claim that a TxDOT Change has occurred).

14.3.2 The fact that a Directive Letter was issued by TxDOT shall not be considered evidence that in fact a TxDOT Change occurred. The determination whether a TxDOT Change in fact occurred shall be based on an analysis of the original requirements of the FA Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

14.3.3 Developer shall be solely responsible for payment of any costs and expenses incurred in connection with a Directive Letter for Work to integrate the TxDOT Works with the Segment 3C Facility Segment.

ARTICLE 15. REPRESENTATIONS AND WARRANTIES

15.1 Developer Representations and Warranties

To the extent that the following representations and warranties repeat the representations and warranties of Developer in the 2013 Agreement, they are repeated for the sole purpose of preserving such prior representations and warranties as of the Effective Date, relate back to the Effective Date, and accordingly do not refresh such prior representations and warranties. Developer hereby represents and warrants to TxDOT as follows:

15.1.1 The Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Base Case Financial Model and the Base Case Financial Model Update (3C), in making its decision to enter into the 2013 Agreement and this Agreement and in making disclosures to Lenders under the Initial Funding Agreements and the Segment 3C Initial Funding Agreements, and (c) as of the Effective Date and Amendment Effective Date are mathematically correct and suitable for making reasonable projections. (For the avoidance of doubt, this Section 15.1.1 does not apply to assumptions used in the Base Case Financial Model, which are addressed in Section 15.1.2.)

15.1.2 The Base Case Financial Model and the Base Case Financial Model Update (3C) (a) were prepared by or on behalf of Developer in good faith, (b) were audited and verified by an independent recognized model auditor immediately prior to the Effective Date and Amendment Effective Date, respectively, and will be audited and verified by an independent recognized model auditor within two Business Days after Financial Close and again within two Business Days after Financial Close (3C), (c) fully disclose all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into the 2013 Agreement and this Agreement, respectively, and in making disclosures to Lenders under the Initial Funding Agreements and the Segment 3C Initial Funding Agreements, respectively, and (d) as of the Effective Date and date of Financial Close (3C) represent the projections that Developer believes in good faith are the most realistic and reasonable for the Facility; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

15.1.3 During all periods necessary for the performance of the Work, Developer and its Contractor(s) will maintain all required authority, license status, professional ability, skills and capacity to perform the Work.

15.1.4 As of the Effective Date and Amendment Effective Date, Developer has evaluated the constraints affecting design and construction of the Facility, including the Facility Right of Way limits as well as the conditions of the NEPA Approval, and has reasonable grounds for believing and does believe that the Facility can be designed and built within such constraints; provided that no representation and no warranty is made in connection with the TxDOT Works or the GP Capacity Improvements.

15.1.5 Except as to parcels that TxDOT lacked title or access to prior to the Effective Date or Amendment Effective Date, as applicable, including for the GP Capacity Improvements, and except in respect of the TxDOT Works, prior to the Effective Date (with respect to the Site for the Segment 3A Facility Segment and Segment 3B Facility Segment and related Capacity Improvements) and Amendment Effective Date (with respect to the Site for the Segment 3C Facility Segment and related Capacity Improvements) Developer, in accordance with Good Industry Practice, examined the Site and surrounding locations, performed appropriate field studies and geotechnical investigations of the applicable Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the applicable Site or surrounding locations; and as a result of such review, inspection, examination and other activities Developer

is familiar with and accepts the physical requirements of the Work, subject to TxDOT's obligations regarding Hazardous Materials under Section 7.9 and Exhibit 11 and Developer's rights to seek relief under Article 13.

15.1.6 Developer has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into the 2013 Agreement and this Agreement. Except as specifically permitted under Article 13 or 14, Developer shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension 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 FA Documents. As of the Effective Date and Amendment Effective Date, Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the FA Documents.

15.1.7 All Work furnished by Developer shall be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the FA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

15.1.8 As of the Effective Date and Amendment Effective Date, Developer is a limited liability company duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the FA Documents to be executed and delivered as of such date, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do business, and is in good standing, in the State as of the Effective Date and Amendment Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the FA Documents.

15.1.9 The execution, delivery and performance of the FA Documents, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing the FA Documents, the Original PABs Agreement, the New PABs Agreement and such Principal Facility Documents on behalf of Developer has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Developer; and the FA Documents, the Original PABs Agreement, the New PABs Agreement and such Principal Facility Documents have been (or will be) duly executed and delivered by Developer.

15.1.10 Neither the execution and delivery by Developer of the FA Documents, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer.

15.1.11 As of the Effective Date and Amendment Effective Date, each of the FA Documents, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each member of Developer, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.1.12 As of the Effective Date and Amendment Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the FA Documents, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which Developer is a party, or which challenges the authority of the Developer official executing the FA Documents, the Original PABs Agreement, the New PABs Agreement or such Principal Facility Documents; and Developer has disclosed to TxDOT prior to the Effective Date and Amendment Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

15.1.13 As of the Effective Date and Amendment Effective Date, Developer has disclosed to TxDOT in writing all organizational conflicts of interest of Developer and its Contractors of which Developer is actually aware. For this purpose, organizational conflict of interest has the meaning set forth in the instructions to proposers under which Developer submitted its Proposal.

15.1.14 To the extent any Design-Build Contractor is not Developer, Developer represents and warrants as to each such Design-Build Contractor, as of the effective date of its Design-Build Contract, as follows: (a) the Design-Build Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) with respect to Persons that individually hold more than 10% of the capital stock of the Design-Build Contractor (including options, warrants and other rights to acquire capital stock), such stock is owned by the Persons whom Developer has set forth in a written certification delivered to TxDOT prior to the Effective Date or Amendment Effective Date, as applicable; (c) the Design-Build Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the Design-Build Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the design and construction of the applicable portions of the Facility for which it is engaged under the Design-Build Contract in accordance with the FA Documents; and (e) the Design-Build Contractor is not in breach of any applicable Law that would have a material adverse effect on the design and construction of the Facility.

15.1.15 To the extent any O&M Contractor is not Developer, Developer represents and warrants as to each such O&M Contractor, as of the effective date of its O&M Contract, as follows: (a) the O&M Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) the capital stock of the O&M Contractor (including options, warrants and other rights to acquire capital stock) is owned by the Persons whom Developer has or will set forth in a written certification delivered to TxDOT prior to the execution of the O&M Contract; (c) the O&M Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the O&M

Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the operation and maintenance of the Facility in accordance with the FA Documents; and (e) the O&M Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of the Facility.

15.1.16 The execution and delivery by Developer of the 2013 Agreement, this Agreement, the Lease, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which Developer is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.1.17 The execution and delivery by Developer of the FA Documents, the Original PABs Agreement and the New PABs Agreement and performance by Developer of its obligations thereunder will not conflict with any Laws applicable to Developer that are valid and in effect on the Effective Date or Amendment Effective Date.

15.2 TxDOT Representations and Warranties

To the extent that the following representations and warranties repeat the representations and warranties of TxDOT in the 2013 Agreement, they are repeated for the sole purpose of preserving such prior representations and warranties as of the Effective Date, relate back to the Effective Date, and accordingly do not refresh such prior representations and warranties. TxDOT hereby represents and warrants to Developer as follows:

15.2.1 As of the Effective Date and Amendment Effective Date, TxDOT has full power, right and authority to execute, deliver and perform the FA Documents and the Principal Facility Documents to which TxDOT is a party and to perform each and all of the obligations of TxDOT provided for herein and therein.

15.2.2 Each person executing the FA Documents, the Original PABs Agreement, the New PABs Agreement and such Principal Facility Documents on behalf of TxDOT has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of TxDOT; and such FA Documents, the Original PABs Agreement, the New PABs Agreement and such Principal Facility Documents have been (or will be) duly executed and delivered by TxDOT.

15.2.3 As of the Effective Date and Amendment Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on TxDOT which challenges TxDOT's authority to execute, deliver or perform, or the validity or enforceability of, the FA Documents, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which TxDOT is a party or which challenges the authority of the TxDOT official executing the FA Documents, the Original PABs Agreement, the New PABs Agreement and such Principal Facility Documents; and TxDOT has disclosed to Developer prior to the Effective Date and Amendment Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which TxDOT is aware.

15.2.4 As of the Effective Date and Amendment Effective Date, each of the FA Documents, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which TxDOT is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of TxDOT, enforceable against TxDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and

similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.2.5 The execution and delivery by TxDOT of the 2013 Agreement, this Agreement, the Lease, the Original PABs Agreement, the New PABs Agreement and the Principal Facility Documents to which TxDOT is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.2.6 The execution and delivery by TxDOT of the FA Documents, the Original PABs Agreement and the New PABs Agreement and performance by TxDOT of its obligations thereunder will not conflict with any Laws applicable to TxDOT that are valid and in effect on the Effective Date or Amendment Effective Date.

15.3 Survival of Representations and Warranties

The representations and warranties of Developer and TxDOT contained herein shall survive expiration or earlier termination of this Agreement and the Lease.

15.4 Special Remedies for Mutual Breach of Warranty

Notwithstanding any other provision of this Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the warranties set forth in this Article 15 by both Developer and TxDOT but does not also constitute or result in any other breach or default by either Party, then such breaches shall not form the basis for a Compensation Event or damage claim by TxDOT against Developer. Instead, the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the FA Documents and Principal Facility Documents as set forth in Section 24.14, or Termination by Court Ruling as set forth in Section 19.12 and Exhibit 20.

ARTICLE 16. INSURANCE; PERFORMANCE SECURITY; INDEMNITY

16.1 Insurance

16.1.1 Insurance Policies and Coverage

16.1.1.1 At minimum Developer shall procure and keep in effect the Insurance Policies, or cause them to be procured and kept in effect, and in each case satisfy the requirements therefor set forth in this Section 16.1 and Exhibit 17. Developer shall also procure or cause to be procured and kept in effect the Contractors' insurance coverages as required in Section 16.1.2.5 and Exhibit 17.

16.1.2 General Insurance Requirements

16.1.2.1 Qualified Insurers

Each of the Insurance Policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is:

(a) Licensed or, in the case of Lloyd's of London authorized, to do business in the State and has a current policyholder's management and financial size category rating of not less than "A – VII" according to A.M. Best's Insurance Reports Key Rating Guide; or

(b) Otherwise approved in writing by TxDOT.

16.1.2.2 Deductibles and Self-Insured Retentions

TxDOT shall have no liability for deductibles, self-insured retentions and amounts in excess of the coverage provided, unless part of a Compensation Amount or Termination Compensation. In the event that any required coverage is provided under a self-insured retention, the entity responsible for the self-insured retention shall have an authorized representative issue a letter to TxDOT, at the same time the Insurance Policy is to be procured, stating that it shall protect and defend TxDOT to the same extent as if a commercial insurer provided coverage for TxDOT.

16.1.2.3 Primary Coverage

Each Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

16.1.2.4 Verification of Coverage

(a) At each time Developer is required to initially obtain or cause to be obtained each Insurance Policy, including insurance coverage required of Contractors, and thereafter not later than 30 days prior to the expiration date of each Insurance Policy, Developer shall deliver to TxDOT a certificate of insurance and a written evidence of insurance. The certificate and evidence must be consistent in all respects. The evidence of insurance shall be on the most recent ACORD form, without disclaimer. Each required certificate must be in standard form, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage and deductibles, include as attachments all additional insured endorsements, include a statement of non-cancellation consistent with Section 16.1.2.8(a), and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. Each required evidence must be signed by a representative or agent of the insurance company shown on the evidence. The evidence must be original, state the signer's company affiliation, title and phone number, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles, subrogation waiver, termination provisions of the policy and other essential policy terms, list and describe all endorsements, include as attachments all additional insured endorsements, and include a statement of non-cancellation consistent with Section 16.1.2.8(a), and otherwise must be in form reasonably satisfactory to TxDOT.

(b) In addition, within a reasonable time after availability (but not to exceed 15 days), Developer shall deliver to TxDOT (i) a complete certified copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all endorsements thereto and (ii) satisfactory evidence of payment of the premium therefor.

(c) If Developer has not provided TxDOT with the foregoing proof of coverage and payment within five days after TxDOT delivers to Developer written notice of a Developer Default under Section 17.1.1.9 and demand for the foregoing proof of coverage, TxDOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy; and Developer shall reimburse TxDOT for the cost thereof upon demand, and (ii) suspend all or any portion of Work and close the Facility until TxDOT receives from Developer such proofs of coverage in compliance with this Section 16.1 (or until TxDOT obtains an Insurance Policy, if it elects to do so).

16.1.2.5 Contractor Insurance Requirements

(a) Developer's obligations regarding Contractors' insurance are contained in Exhibit 17.

(b) If any Contractor fails to procure and keep in effect the insurance required of it under Exhibit 17 and TxDOT asserts the same as a Developer Default hereunder, Developer may, within the applicable cure period, cure such Developer Default by (i) causing such Contractor to obtain the requisite insurance and providing to TxDOT proof of insurance, (ii) procuring the requisite insurance for such Contractor and providing to TxDOT proof of insurance or (iii) terminating the Contractor and removing its personnel from the Site.

16.1.2.6 Facility-Specific Insurance

Except as expressly provided otherwise in Exhibit 17, all Insurance Policies required hereunder shall be purchased specifically and exclusively for the Facility with coverage limits devoted solely to the Facility.

16.1.2.7 Policies with Insureds in Addition to Developer

All Insurance Policies that are required to insure Persons (whether as named or additional insureds) in addition to Developer shall comply or be endorsed to comply with the following provisions.

(a) The Insurance Policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Facility or Developer's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Facility consultants).

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

(c) All endorsements adding additional insureds to required Insurance Policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the Insurance Policy generally, and shall state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or

omission of a named insured or any breach by a named insured of any provision in the policy which would otherwise result in forfeiture or reduction of coverage. Additional insured endorsements may exclude liability due to the sole negligence of the additional insured party. The commercial general liability and builders third party liability insurance shall include completed operations coverage.

16.1.2.8 Additional Terms and Conditions

(a) Each Insurance Policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written notice (or ten days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to TxDOT and each other insured or additional insured party; provided that Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 16.1.2.13. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(b) The commercial general liability Insurance Policy and any builder's third party liability Insurance Policy shall cover liability arising out of the acts or omissions of Developer's employees engaged in the Work and employees of Contractors that are enrolled and provided coverage under such liability policy.

(c) If Developer's or any Contractor's activities involve transportation of Hazardous Materials, the automobile liability Insurance Policy for Developer or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90).

(d) Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability Insurance Policies).

16.1.2.9 Waivers of Subrogation

TxDOT waives all rights against the Developer-Related Entities, and Developer waives all rights against the Indemnified Parties, for any claims to the extent covered by valid and collectible insurance obtained pursuant to this Section 16.1, except such rights as they may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under Section 16.1.4.3, then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Contractors to provide similar waivers in writing each in favor of all other parties enumerated above. Subject to Section 16.1.2.13, each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss; provided that with respect to auto liability policies that Developer is to cause non-Key Contractors to obtain pursuant to Exhibit 17, Developer's obligation is limited to using diligent efforts to cause each such Contractor to include in the policy an agreement of the insurer to waive any subrogation rights the insurer may have against the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss.

16.1.2.10 No Recourse

There shall be no recourse against TxDOT or the Independent Engineer for payment of premiums or other amounts with respect to the Insurance Policies required hereunder, except to the extent of increased premium costs recoverable under Section 13.2 or 14.1.

16.1.2.11 Support of Indemnifications

The Insurance Policies shall support but are not intended to limit Developer's indemnification obligations under the FA Documents.

16.1.2.12 Adjustments in Coverage Amounts

(a) At least once every five years during the Term, TxDOT and Developer shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 17 for per occurrence, aggregate or combined single limits. At the same frequency TxDOT and Developer shall review and adjust, as appropriate, the deductibles or self-insured retentions for the Insurance Policies.

(b) Developer shall retain a qualified and reputable insurance broker or advisor, experienced in insurance brokerage and underwriting practices for major highway projects, to analyze and recommend increases, if any, in such limits and adjustments to deductibles or self-insured retentions. Developer shall deliver to TxDOT, not later than 120 days before each fifth year anniversary of the Effective Date, a written report including such analysis and recommendations for TxDOT's approval. TxDOT shall have 45 days after receiving such report to approve or disapprove the proposed increases in limits and adjustments to deductibles or self-insured retentions.

(c) In determining increases in limits and adjustments to deductibles or self-insured retentions, Developer and TxDOT shall take into account (i) claims and loss experience for the Facility, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles or self-insured retentions; (ii) the condition of the Facility, (iii) the Safety Compliance and Noncompliance Points record for the Facility; (iv) then-prevailing Good Industry Practice for insuring comparable transportation projects; and (v) the provisions regarding unavailability of increased coverage set forth in Section 16.1.2.13.

(d) Any Dispute regarding increases in limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

16.1.2.13 Inadequacy and Unavailability of Required Coverages

(a) TxDOT makes no representation that the limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under this Agreement, to TxDOT, or any third party. No such limits of liability or approved variances therefrom shall preclude TxDOT from taking any actions as are available to it under the FA Documents or the Lease, or otherwise at Law.

(b) If Developer demonstrates to TxDOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to place the insurance coverages it is required to provide hereunder, and if despite such diligent efforts and through no fault of Developer any of such coverages (or any of the required terms of such coverages, including Insurance Policy limits) are or become unavailable on commercially reasonable terms, TxDOT will grant Developer an interim written variance from such requirements under which Developer shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 16.1 as is commercially reasonable under then-existing insurance market conditions.

(c) Developer shall not be excused from satisfying the insurance requirements of this Section 16.1 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including Insurance Policy limits) are not available on commercially reasonable terms, Developer shall bear the burden of proving either that (i) the same is not available at all in the global insurance and reinsurance markets or (ii) the premiums for the same have so materially increased over those previously paid for the same coverage that no reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are justified by the risk protection afforded. For the purpose of clause (ii), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed highway facilities, and Developer shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Facility or Facility Right of Way, or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an Insurance Policy required by this Section 16.1 or in connection with any unrelated work or activity of Developer-Related Entities or Affiliates, shall be considered in determining whether required insurance is commercially unavailable.

16.1.2.14 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that litigation and mediation defense costs may be included within the limits of coverage of professional and pollution liability policies.

16.1.2.15 Contesting Denial of Coverage

If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Developer's request, TxDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

16.1.3 Lender Insurance Requirements; Additional Insurance Policies

16.1.3.1 If under the terms of any Funding Agreement or Security Document Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements

of this Agreement provided such Insurance Policy meets all the other applicable requirements of this Section 16.1.

16.1.3.2 If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include TxDOT, the Independent Engineer and their respective members, directors, officers, employees, agents and Facility consultants as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 16.1.2.7(c); and Developer shall provide to TxDOT the proofs of coverage and copy of the policy described in Section 16.1.2.4. If, however, Developer demonstrates to TxDOT that inclusion of such Persons as additional insureds will increase the premium, TxDOT shall elect either to pay the increase in premium or forego additional insured coverage. The provisions of Sections 16.1.2.4, 16.1.2.7, 16.1.2.9, 16.1.2.10, 16.1.2.15 and 16.1.4 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

16.1.4 Prosecution of Claims

16.1.4.1 Unless otherwise directed by TxDOT in writing with respect to TxDOT's insurance claims, Developer shall be responsible for reporting and processing all potential claims by TxDOT or Developer against the Insurance Policies required hereunder. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all matters which may give rise to an insurance claim by Developer or TxDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

16.1.4.2 TxDOT agrees to promptly notify Developer of TxDOT's incidents, potential claims against TxDOT, and matters which may give rise to an insurance claim against TxDOT, to tender to the insurer TxDOT's defense of the claim under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

16.1.4.3 If in any instance Developer has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from TxDOT to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations and not committed such failure. Nothing in this Section 16.1.4 or elsewhere in this Section 16.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 16.1.

16.1.4.4 If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by TxDOT or another Indemnified Party, then TxDOT or the other Indemnified Party may, but

is not obligated to, (a) notify Developer in writing of TxDOT's intent to report the claim directly with the insurer and thereafter process the claim, and (b) proceed with reporting and processing the claim if TxDOT or the other Indemnified Party does not receive from Developer, within ten days after so notifying Developer, written proof that Developer has reported the claim directly to the insurer. TxDOT or the other Indemnified Party may dispense with such notice to Developer if TxDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

16.1.5 Umbrella and Excess Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

16.1.6 Insurance for TxDOT Works

Notwithstanding anything to the contrary in this Section 16.1 or in Exhibit 17, Developer shall not be required to procure and keep in effect any Insurance Policies in respect of the TxDOT Works prior to the TxDOT Substantial Completion Date.

16.2 Payment and Performance Security

16.2.1 P&P Bonds for Design and Construction

As of issuance of NTP2, Developer provided, as security for its payment and performance obligations under the 2013 Agreement respecting the Segment 3A Facility Segment, P&P Bonds in accordance with Exhibit 31. As a condition to TxDOT's issuance of NTP2 (3C), Developer shall provide, as security for its payment and performance obligations under this Agreement respecting the Segment 3C Facility Segment, P&P Bonds in conformity with Exhibit 31. As a condition to TxDOT's issuance of a notice to proceed for subsequent Secured Work (not including the Segment 3C Facility Segment), Developer shall provide, as security for its payment and performance obligations P&P Bonds in conformity with Exhibit 31.

16.2.2 TxDOT Determinations

Respecting the P&P Bonds for the Segment 3A Facility Segment, TxDOT has determined, as permitted by Transportation Code, Section 223.205, that (a) they are sufficient to (i) ensure the proper performance of the Developer's obligations for carrying out and completing the subject public work; and (ii) protect TxDOT and claimants with respect thereto, and (b) it is impracticable for a private entity to provide security in the amount described by subsection (b) of the Transportation Code, Section 233.205.

16.2.3 Proof of Payments and Wages for Certain Subsequent Secured Work

Whenever Developer is performing subsequent Secured Work that does not involve payment of TxDOT funds to Developer, Developer shall deliver to TxDOT, within 20 days after the end of each calendar month until final acceptance of the Construction Work related to such subsequent Secured Work, written certificates regarding payment and affidavits of wages paid equivalent to those described in paragraphs 9, 11(a) and 11(d) of the form of certificate in Attachment 2 to Exhibit 7.

16.2.4 Security from O&M Contractors

In the event Developer obtains payment or performance security from any O&M Contractor, Developer shall cause TxDOT to be named at issuance of such payment and performance security as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to TxDOT within ten days after issuance.

16.2.5 No Developer Security for TxDOT Works

Notwithstanding anything to the contrary in Section 16.2 or 16.3. Developer shall in no event be required to provide to TxDOT a letter of credit or any other security or guarantee in respect of the TxDOT Works prior to TxDOT Substantial Completion.

16.3 Letters of Credit

16.3.1 General Provisions

Wherever in the FA Documents Developer has the option or obligation to deliver to TxDOT a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the FA Documents:

16.3.1.1 The letter of credit shall:

- (a) Be a standby letter of credit;
- (b) Be issued by a financial institution with a minimum credit rating of "A-," "A3 or "A-" by any one of Standard & Poor's, Moody's or Fitch, respectively, and with an office in Austin, Dallas, Houston, Fort Worth, or San Antonio at which the letter of credit can be presented for payment, or if such financial institution does not have an office in any of such cities at which the letter of credit may be presented for payment, then it must accept presentation of the letter of credit, sight draft and certificate by facsimile transmission to a location in the U.S.;
- (c) Be in form approved by TxDOT in its good faith discretion. (For the avoidance of doubt, TxDOT will accept a form substantially similar to the form TxDOT included in the Reference Information Documents (if any));
- (d) Be payable immediately, conditioned only on written presentment from TxDOT to the issuer of a sight draft drawn on the letter of credit and a certificate stating that TxDOT has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to TxDOT, without requirement to present the original letter of credit;
- (e) Provide an expiration date not earlier than one year from date of issue;
- (f) Allow for multiple draws; and
- (g) Name TxDOT beneficiary.

16.3.1.2 TxDOT shall have the right to draw on the letter of credit after not less than two Business Days' prior written notice to Developer for draws under clause (a) below and without prior notice to Developer for draws under clause (b) or (c) below, unless otherwise expressly provided in the FA Documents with respect to the letter of credit if (a) Developer has failed to pay or perform when due the duty, obligation or liability under the FA Documents for which the letter of credit is held, (b) 30 days after the credit rating of the letter of credit issuer has been downgraded and no longer satisfies the requirement of Section 16.3.1.1(b) unless Developer delivers a new letter of credit which complies with the requirements of Section 16.3.1.1 within such 30-day period, or (c) Developer for any reason fails to deliver to TxDOT a new or replacement letter of credit, on the same terms, or at least a one year extension of the expiration date of the existing letter of credit, by not later than 45 days before such expiration date, unless the applicable terms of the FA Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question. For all draws conditioned on prior written notice from TxDOT to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security of Developer. If TxDOT draws on the letter of credit under clause (a) above, TxDOT shall use and apply the proceeds as provided in the FA Documents for such letter of credit. If TxDOT draws on the letter of credit under clause (b) or (c) above, TxDOT shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit without payment of interest to Developer.

16.3.1.3 TxDOT shall use and apply draws on letters of credit toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). If TxDOT receives proceeds of a draw in excess of the relevant obligation, TxDOT shall promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

16.3.1.4 Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from TxDOT a refund of the proceeds which are misapplied, interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of improper draw until repaid, and subject to Section 17.6.4, reimbursement of the reasonable costs Developer incurs as a result of such misapplication; provided that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

16.3.1.5 Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with TxDOT's presentment of sight drafts and drawing against letters of credit or replacements thereof.

16.3.1.6 In the event TxDOT makes a permitted assignment of its rights and interests under this Agreement, Developer shall cooperate so that concurrently with the

effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

16.3.1.7 TxDOT acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), TxDOT's draw may only be based on the underlying obligations of such Person.

16.3.2 Special Letter of Credit Provisions

Any terms and conditions applicable to a particular letter of credit which Developer or a Lender is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

16.4 Guarantees

16.4.1 In the event Developer, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, Developer shall cause such Person to (a) expressly include TxDOT as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party, and (b) deliver to TxDOT a duplicate original of such guaranty. Such guaranty shall provide that the rights and protections of TxDOT shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party.

16.4.2 TxDOT agrees to forebear from exercising remedies under any such guaranty so long as Developer or a Lender is diligently pursuing remedies thereunder.

16.5 Indemnity by Developer

16.5.1 Subject to Section 16.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Third Party Claims and Third Party Losses, in each case if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from:

16.5.1.1 The breach or alleged breach of the FA Documents by Developer;

16.5.1.2 The failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management);

16.5.1.3 Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any Developer-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Facility of methods, processes, designs, information, or other items furnished or communicated to TxDOT or another Indemnified Party pursuant to the FA Documents; provided that this indemnity shall not apply to any infringement resulting from TxDOT's failure to comply with specific written instructions regarding use provided to TxDOT by Developer or by another Person in connection with the TxDOT Works;

16.5.1.4 The actual or alleged culpable act, culpable error or misconduct of any Developer-Related Entity in or associated with performance of the Work;

16.5.1.5 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;

16.5.1.6 Any and all stop notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to Contractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that TxDOT is not in default in payments owing (if any) to Developer with respect to such Work;

16.5.1.7 Any actual or threatened Developer Release of Hazardous Materials;

16.5.1.8 The claim or assertion by any other developer or contractor that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work;

16.5.1.9 Any dispute between Developer and a Utility Owner, or any Developer-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement (other than any Utility Agreements entered into in connection with TxDOT's obligations under Section 25.5);

16.5.1.10 (a) Any Developer-Related Entity's breach of or failure to perform an obligation that TxDOT owes to a third Person, including Governmental Entities, under Law or under any agreement between TxDOT and a third Person, where TxDOT has delegated performance of the obligation to Developer pursuant to the terms of the FA Documents or (b) the acts or omissions of any Developer-Related Entity which render TxDOT unable to perform or abide by an obligation that TxDOT owes to a third Person, including Governmental Entities, under any agreement between TxDOT and a third Person, where the agreement is previously disclosed or known to Developer;

16.5.1.11 The fraud, bad faith, arbitrary or capricious acts, willful misconduct, negligence or violation of Law or contract by any Developer-Related Entity in connection with Developer's performance of real property acquisition services under the FA Documents;

16.5.1.12 Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (a) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of the FA Documents, Facility Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (b) the intentional misconduct or negligence of any Developer-Related Entity, or (c) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity; or

16.5.1.13 If applicable, any violation of any federal or state securities or similar law by any Developer-Related Entity, or Developer's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs.

16.5.2 Subject to Section 16.5.4, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all Third Party Claims and Third Party Losses arising out of, relating to or resulting from errors, inconsistencies or other Defects in the design or construction of the Facility and/or of Utility Adjustments included in the Design Work and/or Construction Work, including any such Third Party Claims or Third Party Losses arising out of, relating to, or resulting from the performance by TxDOT of material inspection and testing services pursuant to Exhibit 33.

16.5.3 [RESERVED.]

16.5.4 Subject to the releases and disclaimers herein, including all the provisions set forth in Section 6.3.8, Developer's indemnity obligation shall not extend to any Third Party Claims and Third Party Losses to the extent caused or contributed to by:

16.5.4.1 The negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party, including negligence resulting in TxDOT Works Defects;

16.5.4.2 TxDOT's breach of any of its obligations under the FA Documents, including breaches that are or result in TxDOT Works Defects;

16.5.4.3 An Indemnified Party's violation of any Laws or Governmental Approvals, including violations that are or result in TxDOT Works Defects;

16.5.4.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions or Technical Documents, but only where prior to occurrence of the Third Party Loss Developer complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Developer actually knew of the deficiency, unsuccessfully sought TxDOT's waiver or approval of a Deviation from such specification; or

16.5.4.5 TxDOT Works Defects, but only where the resulting Third Party Loss is sustained or incurred prior to the expiration of the TxDOT Warranty Period.

16.5.5 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 16.5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

16.5.6 For purposes of this Section 16.5, "Third Party Claim" includes a claim, dispute, disagreement, cause of action, demand, suit, action, judgment, investigation, or legal or administrative proceeding which (a) is asserted, initiated or brought by any Indemnified Party's employee, agent or contractor against an Indemnified Party, (b) is within the scope of the indemnities and (c) is not covered by the Indemnified Party's worker's compensation program. For purposes of this Section 16.5, "Third Party Loss" includes any actual or alleged Loss sustained or incurred by such employee, agent or contractor.

16.6 Defense and Indemnification Procedures

16.6.1 If any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 16.5, TxDOT shall by writing as soon as practicable after receipt of the claim, (a) inform Developer of the claim, (b) send to Developer a copy of all written materials TxDOT has received asserting such claim and (c) notify Developer that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Developer accepts the tender of the claim in accordance with Section 16.6.3. As soon as practicable after Developer receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable Insurance Policies. TxDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

16.6.2 If the insurer under any applicable Insurance Policy accepts the tender of defense, TxDOT and Developer shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 16.6.3 shall apply.

16.6.3 If the defense is tendered to Developer, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that Developer:

16.6.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

16.6.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

16.6.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

If Developer accepts the tender of defense under Section 16.6.3.1, Developer shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Developer shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

16.6.3.4 Developer shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

16.6.3.5 The Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Developer concerning such defense.

16.6.4 If Developer responds to the tender of defense as specified in Section 16.6.3.2 or 16.6.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

16.6.5 The Indemnified Party may assume its own defense by delivering to Developer written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

16.6.5.1 A conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense;

16.6.5.2 Developer is otherwise not providing an effective defense in connection with the claim; or

16.6.5.3 Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

16.6.6 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

16.6.6.1 In the case of a defense conducted under Section 16.6.3.1, it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed;

16.6.6.2 In the case of a defense conducted under Section 16.6.3.2, it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

16.6.6.3 In the case of a defense conducted under Section 16.6.3.3, it shall have the right to settle or compromise the claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

16.6.7 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 16.6.6, shall be resolved according to the Dispute Resolution Procedures. Developer shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

16.6.8 The Parties acknowledge that while Section 16.5 contemplates that Developer will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees

and other litigation and defense costs, in accordance with the indemnification arrangements of Section 16.5, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

16.6.9 In determining responsibilities and obligations for defending suits pursuant to this Section 16.6, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

ARTICLE 17. DEFAULT; REMEDIES; DISPUTE RESOLUTION

17.1 Default by Developer; Cure Periods

17.1.1 Developer Default

Subject to relief from its performance obligations pursuant to Sections 13.1.5.1 and 13.1.5.2, Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a “Developer Default”):

17.1.1.1 Developer (a) fails to begin the applicable Work within 30 days following issuance of NTP1; (b) fails to begin the applicable Work authorized by NTP1 (3C) within 30 days after the later of (i) issuance of NTP1 (3C) and (ii) the Amendment Effective Date; (c) fails to satisfy all conditions to issuance of NTP2 or NTP2 (3C), as the case may be, under Section 7.7.2.2 by the NTP2 Conditions Deadline or the NTP2 (3C) Conditions Deadline, as applicable; (d) fails to begin applicable O&M Work with diligence and continuity by the Operating Commencement Date; (e) fails to satisfy all conditions to commencement of the applicable Construction Work, and commence such Construction Work with diligence and continuity, by the deadline therefor set forth in Exhibit 9, as the same may be extended pursuant to this Agreement; or (f) fails to achieve Final Acceptance of any Facility Segment by the applicable Final Acceptance Deadline;

17.1.1.2 An Abandonment by Developer;

17.1.1.3 Developer fails to achieve Service Commencement for a Facility Segment by the applicable Service Commencement Deadline, as the same may be extended pursuant to this Agreement;

17.1.1.4 Any failure comparable to a failure described in Section 17.1.1.1 through 17.1.1.3 and Section 17.1.1.11 occurs with respect to any Upgrade that Developer is obligated to perform under this Agreement;

17.1.1.5 Developer fails to make any payment due TxDOT under the FA Documents (except the TxDOT Tolling Services Agreement) or Independent Engineer Joint Work Authorization when due, or fails to deposit funds to any reserve or account in the amount and within the time period required by this Agreement;

17.1.1.6 There occurs any use of the Facility or Airspace or any portion thereof in violation of this Agreement, the Technical Provisions, Technical Documents, Governmental Approvals or Laws (except violations of Law by Persons other than Developer-Related Entities and violations by Governmental Entities asserting governmental authority);

17.1.1.7 There occurs any closure of the Facility or any portion thereof, or any lane closure, except as expressly permitted otherwise or expressly excused under this Agreement, the Technical Provisions and the TxDOT-approved Traffic Management Plan;

17.1.1.8 Any representation or warranty in the FA Documents (except the TxDOT Tolling Services Agreement) made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to TxDOT pursuant to the FA Documents (except the TxDOT Tolling Services Agreement) is false or materially misleading or materially inaccurate when made or omits material information when made;

17.1.1.9 Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under this Agreement or the Lease for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

17.1.1.10 Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Lease, the Facility or Developer's Interest, or there occurs a Change of Control, in violation of Article 21;

17.1.1.11 Developer materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the FA Documents (except the TxDOT Tolling Services Agreement), including material failure to perform the Design Work, Construction Work, O&M Work or any material portion thereof in accordance with the FA Documents (except the TxDOT Tolling Services Agreement);

17.1.1.12 After exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Developer, (b) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (c) any affiliate of Developer for whom transfer of ownership would constitute a Change of Control, or (d) any Key Contractor whose work is not completed;

17.1.1.13 There occurs any Persistent Developer Default, TxDOT delivers to Developer written notice of the Persistent Developer Default, and either (a) Developer fails to deliver to TxDOT, within 45 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 17.3.6 or (b) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan;

17.1.1.14 Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign 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;

17.1.1.15 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 U.S. or foreign bankruptcy, insolvency or other similar Law 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;

17.1.1.16 Any voluntary or involuntary case or other act or event described in Sections 17.1.1.14 and 17.1.1.15 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (a) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (b) any member of Developer for whom transfer of ownership would constitute a Change of Control, or (c) any Guarantor of material Developer obligations to TxDOT under the FA Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty;

17.1.1.17 In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Developer or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, this Agreement or any of the other FA Documents is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute;

17.1.1.18 Developer fails to timely satisfy its financing obligation under Section 4.1.4, unless such failure is excused as more specifically set forth in Section 4.1.4.3; or

17.1.1.19 Developer fails to satisfy its obligations under Section 4.1.4.5(b) to increase the Financial Option Security to \$75 million.

For the avoidance of doubt, a Developer Default excludes failure by TxDOT to achieve TxDOT Substantial Completion by the applicable Milestone Schedule Deadline.

17.1.2 Cure Periods

Subject to Section 17.2.2, for Developer breaches or failures listed in Attachment 1 to Exhibit 18, the cure periods set forth therein shall exclusively govern for the sole purpose of assessing Noncompliance Points. For Category "A" breaches or failures listed in Attachment 1 to Exhibit 18, the cure period set forth therein shall exclusively govern for the sole purpose of accumulation under clause (b) of the definition of Persistent Developer Default. For the purpose of TxDOT's exercise of other remedies, subject to Section 17.2.2 and subject to remedies that this Article 17 expressly states may be exercised before lapse of a cure period, Developer shall have the following cure periods with respect to the following Developer Defaults:

17.1.2.1 Respecting a Developer Default under Section 17.1.1.13(a), 17.1.1.18 or 17.1.1.19 (solely to correct minor technical errors in the Financial Option Security timely delivered and in the required amount), a period of five days after TxDOT delivers to Developer written notice of the Developer Default;

17.1.2.2 Respecting a Developer Default under Section 17.1.1.1, 17.1.1.7, 17.1.1.9 or 17.1.1.10, a period of 15 days after TxDOT delivers to Developer written notice of the Developer Default; provided that (a) as to a Developer Default under Section 17.1.1.1, such cure period shall not preclude or delay TxDOT's immediate exercise, without notice or demand, of its right, but not the obligation, to effect cure, at Developer's expense, (b) as to a Developer Default under Section 17.1.1.7 such cure period shall not preclude or delay TxDOT's immediate exercise, without notice or demand, of its remedy set forth in Section 17.3.2, and (c) TxDOT shall have the right, but not the obligation, to effect cure, at Developer's expense, if a Developer Default under Section 17.1.1.9 continues beyond five days after such notice is delivered;

17.1.2.3 Respecting a Developer Default under Section 17.1.1.2, 17.1.1.5, 17.1.1.6 or 17.1.1.13(b), a period of 30 days after TxDOT delivers to Developer written notice of the Developer Default;

17.1.2.4 Respecting a Developer Default under Section 17.1.1.8, 17.1.1.11 or 17.1.1.12, a period of 30 days after TxDOT delivers to Developer written notice of the Developer Default; provided that (a) if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure, (b) as to Section 17.1.1.8, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to Section 17.1.1.12, if the debarred or suspended Person is a managing member, general partner or controlling investor of Developer, cure will be regarded as complete when Developer proves it has removed such Person from any position or ability to manage, direct or control the decisions of Developer or to perform Work, and if the debarred or suspended Person is a Key Contractor cure will be regarded as complete when Developer replaces the Key Contractor with TxDOT's prior written approval in its good faith discretion as provided in Section 10.3.1;

17.1.2.5 Respecting a Developer Default under Section 17.1.1.3, the period up to the Long Stop Date for the applicable Facility Segment, as the same may be extended pursuant to this Agreement, regardless of when TxDOT delivers written notice of the Developer Default;

17.1.2.6 Respecting a Developer Default under Section 17.1.1.14, 17.1.1.15, 17.1.1.17 or 17.1.1.19, no cure period (except, as to Section 17.1.1.19, as provided in Section 17.1.2.1), and there shall be no right to notice of a Developer Default under Section 17.1.1.14, 17.1.1.15, 17.1.1.17 or 17.1.1.19 (except, as to Section 17.1.1.19, as provided in Section 17.1.2.1);

17.1.2.7 Respecting a Developer Default under Section 17.1.1.16, a period of ten days from the date of the Developer Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to TxDOT or the Collateral Agent for the benefit of the Facility, in the amount of, as applicable, (a) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Developer or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor; and

17.1.2.8 Respecting a Developer Default under Section 17.1.1.4, the cure period shall be the same as the cure period for a comparable Developer Default under Sections 17.1.1.1, 17.1.1.2, 17.1.1.3 or 17.1.1.11, as applicable.

17.1.3 Certain Curative Actions; Status Report

17.1.3.1 If the Developer Default consists of imposing tolls in excess of that permitted under this Agreement, such Developer Default shall be curable only by (a) reinstating the tolls in effect immediately prior to the impermissible raise in tolls, unless waived by TxDOT, and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged.

17.1.3.2 If the Developer Default consists of failure to give TxDOT a required prior notice and opportunity to complete an applicable review and comment or approval procedure under Section 6.3 before action is taken by Developer, such Developer Default shall be curable only by (a) reversing or suspending the action until the notice and review and comment or approval procedures are followed and completed, unless Developer finished the action before receiving the notice of Developer Default or unless waived by TxDOT, and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

17.1.3.3 If the Developer Default consists of any Developer activity or failure to act which constitutes a change from Developer's activities immediately prior to the Developer Default, such Developer Default shall be curable only by (a) reinstating the activity as it was being performed immediately prior to the Developer Default and (b) disgorging to TxDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

17.1.3.4 For any Developer Default for which a Warning Notice has been delivered by TxDOT to Developer, Developer may request from TxDOT a status report as to Developer's progress in effecting a cure, by delivering to TxDOT a written request accompanied by Developer's own report as to its progress in effecting a cure. TxDOT shall provide its response within ten Business Days after receipt of Developer's written request and report. The response shall be provided solely for purposes of informing Developer as to TxDOT's view of the progress in effecting a cure for the Developer Default, shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute or Claim, and shall not limit in any way TxDOT's right to terminate this Agreement in accordance with Section 19.3 should cure not be effected within the relevant period.

17.1.4 Certain Provisions Regarding the TxDOT Tolling Services Agreement

17.1.4.1 Compliance by TxDOT under the TxDOT Tolling Services Agreement shall be deemed to satisfy any directly corresponding but inconsistent requirements under the FA Documents. TxDOT agrees that performance by TxDOT of the TxDOT Tolling Services Agreement will satisfy Developer's obligations under Section 3.1.

17.1.4.2 If a breach by TxDOT under the TxDOT Tolling Services Agreement also constitutes a breach by Developer under this Agreement, then such breach by

Developer under this Agreement shall not be deemed to constitute a Developer Default or result in the assessment of Noncompliance Points. For the avoidance of doubt, any breach by TxDOT under the TxDOT Tolling Services Agreement shall not excuse any other breach by Developer under this Agreement.

17.2 Warning Notices

17.2.1 Warning Notice Events

Without prejudice to any other right or remedy available to TxDOT, TxDOT may deliver a written notice (a “Warning Notice”) to Developer, with a copy to the Collateral Agent for the senior and first tier subordinate Security Documents, stating explicitly that it is a “Warning Notice” and stating in reasonable detail the matter or matters giving rise to the notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such notice, whenever there occurs any of the following:

17.2.1.1 Any Developer Default under Section 17.1.1.1, 17.1.1.2, 17.1.1.4 (but only if it concerns a Capacity Improvement and is of the same type and nature as a Developer Default under Section 17.1.1.1 or 17.1.1.2), 17.1.1.5 (but only for a material failure to pay or deposit), 17.1.1.6 (but only if material), 17.1.1.7 (but only if it affects a material portion of the Facility), 17.1.1.10, 17.1.1.11, 17.1.1.13, or 17.1.1.16;

17.2.1.2 Delay in achieving Service Commencement for any Facility Segment that extends beyond the applicable Service Commencement Deadline, as the same may be extended pursuant to this Agreement, by more than 90 days; or

17.2.1.3 Any other material Developer Default.

17.2.2 Effect of Warning Notice on Developer Cure Period

17.2.2.1 Any notice of a Developer Default issued under Section 17.1 may, if it concerns a matter under Section 17.2.1, also be issued as a Warning Notice. In such case, the cure period available to Developer, if any, shall be as set forth in Section 17.1.2.

17.2.2.2 If TxDOT issues a Warning Notice under Section 17.2.1 for any Developer Default after it issues a notice of such Developer Default, then the cure period available to Developer, if any, for such Developer Default before TxDOT may seek to appoint a receiver for Developer, remove Developer or terminate this Agreement and the Lease on account of such Developer Default shall be extended by the time period between the date the notice of such Developer Default was issued and the date the Warning Notice is issued. No later issuance of a Warning Notice shall extend the time when TxDOT may exercise any other remedy respecting such Developer Default.

17.2.3 Other Effects of Warning Notice

17.2.3.1 The issuance of a Warning Notice shall entitle TxDOT and the Independent Engineer to increase the level of oversight as provided in Section 18.5.

17.2.3.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 19.3.

17.3 TxDOT Remedies for Developer Default

17.3.1 Termination

In the event of any Developer Default that is or becomes a Default Termination Event set forth in Section 19.3.1, TxDOT may terminate this Agreement and the Lease and thereupon enter and take possession and control of the Facility by summary proceeding available to landlords under applicable Law, which termination shall, among other things, automatically terminate all of Developer's rights under Articles 2 and 3, whereupon Developer shall take all action required to be taken by Developer under Section 19.5.

17.3.2 Immediate TxDOT Entry and Cure of Wrongful Closure

Without notice and without awaiting lapse of the period to cure, in the event of any Developer Default under Section 17.1.1.7 (closure of the Facility or lane closure in violation of the FA Documents), TxDOT may enter and take control of the Facility to the extent TxDOT finds it necessary to reopen and continue operations for the benefit of Developer and the public, until such time as such breach is cured, or TxDOT terminates this Agreement and the Lease. Developer shall pay to TxDOT on demand TxDOT's Recoverable Costs in connection with such action. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, 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 high priority, paramount public interest in providing and maintaining continuous public access to the Facility. The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (a) TxDOT was mistaken in believing such a Developer Default occurred, (b) the third party liability is not insured and not required to be insured under this Agreement and (c) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct. Immediately following rectification of such Developer Default, as determined by TxDOT, acting reasonably, TxDOT shall relinquish control and possession of the Facility back to Developer.

17.3.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

17.3.3.1 Subject to Section 17.3.3.4, if at any time Developer fails to meet any Safety Standard or timely perform Safety Compliance or TxDOT and Developer cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to TxDOT, acting reasonably, TxDOT shall have the absolute right and entitlement to undertake or direct Developer to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by TxDOT or with the Safety Compliance Order.

17.3.3.2 To the extent that any work done pursuant to Section 17.3.3.1 is undertaken by TxDOT and is reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, Developer shall pay to TxDOT on demand TxDOT's Recoverable Costs in connection with such work, and TxDOT (whether it undertakes the work or has directed Developer to undertake the work) shall have no obligation or liability to compensate Developer for any Losses Developer suffers or incurs as a result thereof.

17.3.3.3 To the extent that any work done pursuant to Section 17.3.3.1 is undertaken by TxDOT and is not reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, TxDOT shall compensate Developer only for Losses Developer suffers or incurs as a direct result thereof.

17.3.3.4 To the extent that any Safety Compliance Order work pursuant to Section 17.3.3.1 is undertaken by Developer under written protest delivered prior to starting the work and it is finally determined that the Safety Compliance work was not necessary or constituted activity or work that is part of the construction of the TxDOT Works or part of repair work required of TxDOT under Section 25.7.2, then such work or activity under the Safety Compliance Order shall be treated as a TxDOT Change.

17.3.3.5 Notwithstanding anything to the contrary contained in this Agreement, if in the good faith judgment of TxDOT Developer has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, TxDOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to) (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to TxDOT on demand the cost of such action, including TxDOT's Recoverable Costs, or (b) suspend Construction Work and/or close or cause to be closed any and all portions of the Facility affected by the Emergency or danger. So long as TxDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, 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 high priority, paramount public interest in protecting public and worker safety at the Facility and adjacent and connecting areas. TxDOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by TxDOT, acting reasonably, TxDOT shall allow the Construction Work to continue or such portions of the Facility to reopen, as the case may be. The foregoing shall not, however, protect TxDOT from Developer's lawful claims to indemnity or contribution for third party bodily injury or property damage arising out of any such TxDOT action, if and to the extent (i) TxDOT was mistaken in believing such a Developer Default occurred, (ii) the third party liability is not insured and not required to be insured under this Agreement and (iii) such injury or property damage was caused by TxDOT's negligence, recklessness or intentional misconduct.

17.3.4 TxDOT Step-in Rights

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, TxDOT shall have the right, but not the obligation, for so long as such Developer Default remains uncured by TxDOT or Developer, to pay and perform all or any portion of Developer's obligations and the Work that are the subject of such Developer Defaults, as well as any other then-existing breaches or failures to perform for which Developer received prior written notice from TxDOT but has not commenced diligent efforts to cure.

17.3.4.1 In connection with such action, TxDOT may, to the extent and only to the extent reasonably required for or incident to curing the Developer Default or such other breaches or failures to perform for which Developer received prior written notice from TxDOT but has not commenced and continued diligent efforts to cure:

(a) Employ security guards and other safeguards to protect the Facility;

(b) Spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

(c) Draw on and use proceeds from payment and performance bonds, letters of credit and other performance security to the extent available under the terms thereof to pay such sums;

(d) Execute all applications, certificates and other documents as may be required;

(e) Make decisions respecting, assume control over and continue Work as may be reasonably required;

(f) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably appoints TxDOT as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead;

(g) Take any and all other actions as may be reasonably required or incident to curing; and

(h) Prosecute and defend any action or proceeding incident to the Work undertaken.

17.3.4.2 Developer shall reimburse TxDOT on demand TxDOT's Recoverable Costs in connection with the performance of any act or Work authorized by this Section 17.3.4.

17.3.4.3 TxDOT shall have and is hereby granted a perpetual, non-rescindable right of entry by TxDOT and its Authorized Representatives, contractors, subcontractors, vendors and employees onto the Facility, the Facility Right of Way and any construction, lay down, staging, borrow and similar areas, exercisable at any time or times without notice, for the purpose of carrying out TxDOT's step-in rights under this Section 17.3.4. Neither TxDOT nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto the Facility, the Facility Right of Way or Facility Specific Locations in order to perform under this Section 17.3.4, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Section 17.3.4, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or

for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person.

17.3.4.4 TxDOT's rights under this Section 17.3.4 are subject to the right of any Surety under Payment and Performance Bonds to assume performance and completion of all bonded work.

17.3.4.5 In the case of a Developer Default which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate or suspend its obligations under this Agreement, TxDOT's rights under this Section 17.3.4 are subject to Lender rights to cure under Section 20.4; provided that TxDOT may continue exercise of its step-in rights until the Lender obtains possession and notifies TxDOT that it stands ready to commence good faith, diligent curative action. In the case of any other Developer Default, TxDOT's rights under this Section 17.3.4 are subject to the exercise of step-in rights by the Collateral Agent under the senior Security Documents, provided that the Collateral Agent (a) delivers to TxDOT written notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the cure period available to Developer with respect to the Developer Default in question, and (b) thereafter continues such good faith, diligent exercise of remedies until the Developer Default is fully and completely cured.

17.3.4.6 In the event TxDOT takes action described in this Section 17.3.4 and it is later finally determined that TxDOT lacked the right to do so because there did not occur a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, then TxDOT's action shall be treated as a Directive Letter for a TxDOT Change.

17.3.5 Damages; Offset

17.3.5.1 Subject to Sections 17.3.10 and 17.3.11 and the provisions on liquidated damages set forth in Section 17.4, TxDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages and without duplicate recovery) on account of the occurrence of a Developer Default, including, to the extent available at Law, (a) loss of any compensation due TxDOT under this Agreement proximately caused by the Developer Default, (b) actual and projected costs to remedy any defective part of the Work, (c) actual and projected costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Facility (other than the TxDOT Works prior to their Final Acceptance) to the standard it would have been in if Developer had complied with its obligations to carry out and complete the Work in accordance with the FA Documents, (d) actual and projected costs to TxDOT to terminate, take over the Facility (other than the TxDOT Works prior to their Final Acceptance), re-procure and replace Developer, (e) actual and projected delay costs and (f) actual and projected increases in costs to TxDOT to complete the Facility (other than the TxDOT Works), including the GP Capacity Improvements, the GTBR Capacity Improvement and the 3C Ultimate Capacity Improvement, if not completed, together with interest thereon from and after the date any amount becomes due to TxDOT until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points or other rate specified therefor in this Agreement. Developer shall owe any such damages that accrue after the occurrence of the Developer Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the Developer Default is subsequently cured.

17.3.5.2 TxDOT may deduct and offset any Claim amount owing to it, provided such Claim amount has been liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts TxDOT may owe to Developer or any Affiliate, including any payment of the Public Funds Amount[, Segment 3C Public Funds Amount] or GP Public Funds Amount; provided that TxDOT shall first draw on all amounts held in respect of the Claim in the TxDOT Claims Account under the Facility Trust Agreement.

17.3.5.3 If the Claim amount is not liquidated, TxDOT shall have the following rights:

(a) TxDOT may elect to exercise its rights pursuant to the Facility Trust Agreement and direct the transfer of funds from the Toll Revenue Account to the TxDOT Claims Account up to the disputed portion of the Claim in accordance with the provisions of the Facility Trust Agreement. Upon liquidation, the disputed portion of the Claim shall be satisfied first from the amounts held in the TxDOT Claims Account, and then through TxDOT's right of offset with respect to the liquidated Claim amounts.

(b) TxDOT may elect, by written notice to Developer, to require from Developer a letter of credit in any amount TxDOT designates in its notice, up to the lesser of (a) the disputed portion of the Claim less the amount of funds, if any, held in the TxDOT Claims Account for such Claim or (b) the letter of credit cap. For purposes of this clause (b), (i) the "letter of credit cap" shall initially be \$20 million, (ii) on January 1 of every year following the Effective Date, the letter of credit cap shall be adjusted by a percentage equal to the percentage increase in the CPI between the CPI for the second to last December before the date of the increase and the CPI for the last December before the date of the increase and (iii) in addition to the adjustment in clause (ii), on the date that is five years prior to the end of the Term, the "letter of credit cap" shall double from the amount immediately prior to such date. Developer shall deliver such letter of credit to TxDOT within 15 days after TxDOT delivers such notice to Developer. If a Developer Default occurs because Developer for any reason does not deliver such letter of credit as and when required and fails to cure such Developer Default within the cure period therefor, TxDOT shall have the right, without further notice or demand, and in addition to any other remedies, to deliver a certificate to Developer and the trustee under the Facility Trust Agreement stating that Developer has failed to deliver the letter of credit on the terms and within the time required hereunder, in which case daily transfers of funds from the Toll Revenue Account to the TxDOT Claims Account shall be as provided in Section 2.03(a)(i)(B) of the Facility Trust Agreement. TxDOT shall have the right to draw on such letter of credit as provided in Section 16.3.1.2, except that draw under Section 16.3.1.2(a) shall be conditioned upon liquidation of the disputed Claim through Dispute Resolution Procedures or otherwise and failure of Developer to pay the Claim, together with interest thereon, within 30 days after final determination of the Claim. In the event the amount of the disputed Claim as finally determined, through Dispute Resolution Procedures or otherwise, is less than the amount of the letter of credit, TxDOT shall reimburse Developer for a portion of the fees charged for the letter of credit in the same ratio that the face amount of the letter of credit in excess of the finally determined amount of the Claim bears to the full face amount of the letter of credit. Reimbursement shall be due 30 days after TxDOT receives from Developer documentation of the letter of credit fees Developer has paid. If TxDOT receives such documentation by not later than 14 days before it draws on the letter of credit, TxDOT shall reduce its draw on the letter of credit by the portion of the fees to be reimbursed, in satisfaction of its obligation to reimburse.

17.3.6 Remedial Plan Delivery and Implementation

17.3.6.1 Upon the occurrence of a Persistent Developer Default, Developer shall, within 45 days after written notice of the Persistent Developer Default, be required to prepare and submit a remedial plan for TxDOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance and reduce (a) Developer's cumulative number of Noncompliance Points assessed under Section 18.3 and cumulative number of breaches and failures to perform to the point that such Persistent Developer Default will not continue and (b) the cumulative number of Uncured Noncompliance Points outstanding by at least 50%. Such actions may include improvements to Developer's quality management practices, plans and procedures, revising and restating components of the Management Plans, changes in organizational and management structure, increased monitoring and inspections, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to TxDOT.

17.3.6.2 If Developer (a) complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan, (b) as a result thereof achieves the requirements set forth in Sections 17.3.6.1(a) and (b), and (c) as of the date it achieves such requirements there exist no other uncured Developer Defaults for which a Warning Notice was given, then TxDOT shall reduce the number of cured Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default.

17.3.6.3 Developer's failure to deliver to TxDOT the required remedial plan within such 45 day period shall constitute a material Developer Default, which may result in issuance of a Warning Notice triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Developer Default which may result in issuance of a Warning Notice triggering a 30-day cure period. Developer's failure to cure the Developer Default within the applicable cure period after the Warning Notice may trigger a Default Termination Event under Article 19.

17.3.7 Performance Security

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 17.1.2, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, and subject to Section 16.2.5 if applicable, TxDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to TxDOT under this Agreement with respect to the Developer Default in question in any order in TxDOT's sole discretion. Where access to a bond, letter of credit or other payment or performance security is to satisfy damages owing, TxDOT shall be entitled to make demand, draw, enforce and collect regardless of whether the Developer Default is subsequently cured. TxDOT will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts due TxDOT. The foregoing does not limit or affect any other right of TxDOT to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security, immediately after TxDOT is entitled to do so under the bond, letter of credit, guaranty or other payment or performance security.

17.3.8 Suspension of Work

17.3.8.1 Upon TxDOT's delivery of notice of Developer Default for any of the following breaches or failures to perform by Developer and Developer's failure to fully cure and correct, within the applicable cure period, if any, available to Developer under Section 17.1.2, TxDOT shall have the right and authority to suspend any affected portion of the Work by written order to Developer:

- (a) Performance of Nonconforming Work;
- (b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);
- (c) Certain failures to remove and replace personnel as set forth in Section 10.6.3;
- (d) Failure to provide proof of required insurance coverage as set forth in Section 16.1.2.4(c);
- (e) Failure to carry out and comply with Directive Letters;
- (f) Failure to satisfy any condition to commencement of construction set forth in Section 7.6.1;
- (g) Failure to maintain, extend or replace any P&P Bonds, unless a drawing has been made under the P&P Bonds in the amount of the required coverage provided for in Section 16.2 and the proceeds of such drawing are either held by TxDOT or deposited by the Collateral Agent into a cash collateral account for the benefit of the Collateral Agent and TxDOT;
- (h) The existence of conditions unsafe for workers, other Facility personnel or the general public, including certain failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 17.3.3.5; and
- (i) Developer has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, or (ii) deliver any certificate, release, certified payroll or affidavit of wages paid required with any Payment Request or required under Section 16.2.6.2.

TxDOT will lift the suspension order promptly after Developer fully cures and corrects the applicable breach or failure to perform.

17.3.8.2 In addition, TxDOT shall have the right and authority to suspend any affected portion of the Work by written notice to Developer for the following reasons:

- (a) To comply with any court order or judgment (although it may qualify as a Compensation Event under clause (j) of the definition of "Compensation Event" or Relief Event under clause (n) of the definition of "Relief Event"); or

(b) TxDOT's performance of data recovery respecting archeological, paleontological or cultural resources (although it may qualify as a Relief Event under clause (j) of the definition of "Relief Event").

17.3.8.3 Developer shall promptly comply with any such written suspension order, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of written notice from TxDOT directing Developer to resume work.

17.3.8.4 Except in connection with TxDOT's failure to achieve TxDOT Substantial Completion in accordance with the Milestone Schedule, in addition to the protections from liability under Section 17.3.3.5, TxDOT shall have no liability to Developer, and Developer shall have no right to a Relief Event, Extended Relief Event or Compensation Event, in connection with any suspension properly founded on any of the other grounds set forth in this Section 17.3.8 (except potential Relief Events, Extended Relief Events or Compensation Events in the case of suspensions under Sections 17.3.8.2(a) and (b)). If TxDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, or if TxDOT orders suspension of Work for any other reason, it shall be treated as a Directive Letter for a TxDOT Change, except as provided in Section 17.3.3.5.

17.3.9 Other Rights and Remedies

Subject to Sections 17.3.11, 17.4.7.2 and 19.9, TxDOT shall also be entitled to exercise any other rights and remedies available under this Agreement or the Lease, or available at law or in equity.

17.3.10 Cumulative, Non-Exclusive Remedies

Subject to Sections 17.3.11, 17.4.7.2 and 19.9, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right and remedy of TxDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by TxDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by TxDOT of any or all other such rights or remedies.

17.3.11 Limitation on Consequential Damages

17.3.11.1 Notwithstanding any other provision of the FA Documents and except as set forth in Section 17.3.11.2, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of this Agreement or the Lease, tort (including negligence) or any other theory of liability, and TxDOT releases Developer from any such liability.

17.3.11.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery TxDOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 16.1, (ii) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the Facility and the Work, regardless of whether required to be carried pursuant to Section 16.1, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 16.1.4.3;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of any Developer-Related Entity;

(c) Developer's indemnities set forth in Sections 7.9.6 and 16.5 or elsewhere in the FA Documents;

(d) Developer's obligation to pay liquidated damages in accordance with Section 17.4 or any other provision of the FA Documents;

(e) Losses arising out of Developer Releases of Hazardous Materials;

(f) Developer's obligation to pay compensation to TxDOT as provided in Sections 4.1.4.7 and 5.1, Part A of Exhibit 7 (except any such compensation attributable to any period after the Early Termination Date), and, if applicable, Parts G and I of Exhibit 7, and, if applicable, Exhibit 33;

(g) Amounts Developer may owe or be obligated to reimburse to TxDOT under the express provisions of the FA Documents, including TxDOT's Recoverable Costs;

(h) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the FA Documents expressly state are due from Developer to TxDOT; and

(i) Any credits, deductions or offsets that the FA Documents expressly provide to TxDOT against amounts owing Developer.

17.4 Liquidated Damages

17.4.1 Liquidated Damages for Delayed Service Commencement or Final Acceptance

17.4.1.1 Developer shall be liable for and pay to TxDOT liquidated damages with respect to any failure to achieve Service Commencement for any Facility Segment by the Service Commencement Deadline, or any failure to achieve Final Acceptance of any Facility Segment by the applicable Final Acceptance Deadline, as the same may be extended pursuant to this Agreement. Such liability shall apply even though (a) a cure period remains available to Developer or any Lender under Section 17.1.2.5 or 20.4 or (b) cure occurs. The amounts of such liquidated damages are set forth in Exhibit 18 (except with respect to the GP Capacity Improvements, the GTBR Capacity Improvement and the 3C Ultimate Capacity Improvement, for which the amounts will be determined as provided in Exhibit 16). Such liquidated damages shall commence on the Service Commencement Deadline or the Final Acceptance Deadline, as applicable, as the same may be extended

pursuant to this Agreement, and shall continue to accrue until the date of Service Commencement for such Facility Segment or the date of Final Acceptance, as applicable, or until termination of this Agreement, except that no such liquidated damages shall accrue during the period a Lender has extended the Long Stop Date for the applicable Facility Segment in accordance with Section 20.4.9. Such liquidated damages shall constitute TxDOT's sole right to damages for such delay.

17.4.1.2 Developer acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of late Service Commencement for the Facility (excluding Upgrades) or late Final Acceptance. Such damages include loss of potential revenue payment for TxDOT due to late Service Commencement for the Facility (excluding Upgrades), loss of use, enjoyment and benefit of the Facility and connecting TxDOT transportation facilities by the general public, injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service by the Service Commencement Deadline, which injury to credibility and reputation may directly result in loss of ridership on the Facility and connecting TxDOT transportation facilities and further loss of TxDOT's revenue payment under this Agreement and/or toll revenues on such connecting facilities, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Facility and the unavailability of a substitute for it.

17.4.2 Liquidated Damages Respecting Noncompliance Points

17.4.2.1 Developer shall be liable for and pay to TxDOT liquidated damages for each Noncompliance Point assessed against Developer in the amount set forth in Exhibit 18.

17.4.2.2 In addition, Developer shall be liable for and pay to TxDOT liquidated damages with respect to accumulation of assessed Uncured Noncompliance Points. The trigger points for commencement of such liquidated damages and the measure of such liquidated damages shall be as set forth in Exhibit 18. Such liquidated damages shall continue to accrue until (a) Developer reduces the number of Uncured Noncompliance Points by 25%, (b) the number of Uncured Noncompliance Points is reduced below the trigger points and (c) Developer cures all Developer Defaults that are the subject of Warning Notices.

17.4.2.3 Developer acknowledges that such liquidated damages are reasonable in order to compensate TxDOT (a) for its increased costs of administering this Agreement, for its potential loss of revenue payment, and for potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the FA program, with policy makers and with the general public, and (b) for potential harm and detriment to Users, by reason of the matters that result in accumulated Uncured Noncompliance Points. TxDOT's increased costs include the increased costs of monitoring and oversight under Section 18.5, and could also include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the Facility for their increased costs of monitoring and enforcing Developer compliance with applicable Governmental Approvals. Detriment to the public may include additional wear and tear on vehicles and increased costs of congestion, travel time and accidents. In addition, the events and circumstances that result in the trigger of these liquidated damages are likely to reduce the quality of the Facility so as to adversely affect the experience of Users and their desire to continue using the Facility and connecting

TxDOT transportation facilities. This loss of patronage and demand in turn will cause loss of Toll Revenues or suppress the ability to increase Toll Revenues, to the detriment of TxDOT's potential revenue payment, and loss of toll revenues from connecting TxDOT transportation facilities. Developer further acknowledges that such increased costs and loss of revenue payment, and harm and detriment to Users, would be difficult and impracticable to measure and prove, because, among other things, the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify; the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and the variety of factors that influence use of and demand for the Facility make it difficult to sort out causation and quantify the precise Toll Revenue loss attributable to the matters that will trigger these liquidated damages.

17.4.2.4 For the avoidance of doubt, the liquidated damages provided for under this Section 17.4.2 are not intended to compensate TxDOT, or liquidate Developer's liabilities, for any other costs or damages, including costs of repair, renewal or replacement, costs to correct Nonconforming Work or failure to meet Safety Standards, costs of Safety Compliance work, damages related to failure to establish or fund the Handback Requirements Reserve, or Third Party Claims.

17.4.3 Liquidated Damages Respecting Lane Rental Charges

17.4.3.1 Developer shall be liable for and pay to TxDOT liquidated damages for Lane Rental Charges assessed against Developer in the amounts set forth in Exhibit 18 (except the amounts with respect to the GP Capacity Improvements, the GTBR Capacity Improvement and the 3C Ultimate Capacity Improvement will be determined as provided in Exhibit 16).

17.4.3.2 Developer acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur by reason of the matters that result in Lane Rental Charges. Such damages include loss of potential revenue payment for TxDOT, loss of use, enjoyment and benefit of the Facility and connecting TxDOT transportation facilities by the general public, injury to the credibility and reputation of TxDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of ridership on the Facility and connecting TxDOT transportation facilities and further loss of TxDOT's revenue payment under this Agreement and/or toll revenues on such connecting facilities, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Facility and the unavailability of a substitute for it.

17.4.4 Liquidated Damages for Failure to Achieve Financial Close

17.4.4.1 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents on or before the Effective Date, then concurrently with execution of this Agreement, Developer shall deliver, or has delivered, to TxDOT the Financial Option Security in the cumulative original amount of \$10 million.

17.4.4.2 If Developer fails to satisfy its obligations under Section 4.1.4.5(b) to increase the Financial Option Security to \$75 million, TxDOT may terminate this Agreement and the Lease and shall be entitled to collect liquidated damages equal to \$10 million.

17.4.4.3 Developer shall be liable for and pay to TxDOT liquidated damages if Developer for any reason fails to timely satisfy its financing obligations under Section 4.1.4, Developer's failure is not excused in accordance with Sections 4.1.4.3(a) through (f), and, as a result thereof, TxDOT terminates this Agreement and the Lease pursuant to Section 19.3.4. The amount of such liquidated damages shall equal \$75 million if Developer has not exercised its option to extend the Facility Financing Deadline under Section 4.1.4.1(a), and \$100 million if Developer has exercised such option to extend.

17.4.4.4 TxDOT shall be entitled to collect the liquidated damages owing under this Section 17.4.4 through a draw on the Financial Option Security or a forfeiture of the Financial Option Security, as applicable, upon such termination without prior notice to or demand upon Developer for such liquidated damages. Such liquidated damages shall constitute TxDOT's sole right to damages on account of such failure.

17.4.4.5 Developer acknowledges that the time period TxDOT has provided to Developer to close the Initial Facility Debt is ample and reasonable, and that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of the lost opportunity to TxDOT represented by the FA Documents. Such damages include the harm from the difficulty, and substantial additional expense, to TxDOT, to procure and deliver, operate and maintain the Facility through other means, loss of or substantial delay in use, enjoyment and benefit of the Facility by the general public, and injury to the credibility and reputation of TxDOT's transportation improvement program, with policy makers and with the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Facility and the unavailability of a substitute for it.

17.4.5 Acknowledgements Regarding Liquidated Damages

Developer further agrees and acknowledges that:

17.4.5.1 In the event that Developer fails to achieve Service Commencement for any Facility Segment by the applicable Service Commencement Deadline or Final Acceptance of any Facility Segment by the applicable Final Acceptance Deadline, commits breaches and failures resulting in Noncompliance Points or Lane Rental Charges, or fails to satisfy its financing obligations under Section 4.1.4, TxDOT will incur substantial damages;

17.4.5.2 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Sections 17.4.1.2, 17.4.2.3, 17.4.3.2, and 17.4.4.5;

17.4.5.3 As of the Effective Date, the amounts of liquidated damages under Sections 17.4.1, 17.4.2, 17.4.3, and 17.4.4 represent good faith estimates and evaluations by the Parties as to the actual potential damages that TxDOT would incur as a result of late Service Commencement or late Final Acceptance for any Facility Segment, or breaches and failures resulting in Noncompliance Points or Lane Rental Charges or failure to finance, and do not constitute a penalty;

17.4.5.4 The Parties have agreed to such liquidated damages in order to fix and limit Developer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Developer;

17.4.5.5 Such sums are reasonable in light of the anticipated or actual harm caused by delayed Service Commencement or delayed Final Acceptance for any Facility Segment, breaches and failures resulting in Noncompliance Points or Lane Rental Charges, or failure to finance, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy; and

17.4.5.6 Such liquidated damages are not intended to, and do not, liquidate Developer's liability under the indemnification provisions of Section 16.5, even though third party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such liquidated damages.

17.4.6 Payment; Satisfaction; Waiver

17.4.6.1 Developer shall pay any liquidated damages owing under this Section 17.4.1, 17.4.2 or 17.4.3 within 20 days after TxDOT delivers to Developer TxDOT's invoice or demand therefor, such invoice or demand to be issued not more often than monthly. Liquidated damages under any provision of Section 17.4 shall be due and payable to TxDOT without right of offset, deduction, reduction or other charge, except as provided in Section 17.6.3.

17.4.6.2 TxDOT shall return to Developer any amounts received as liquidated damages on account of the assessment of a Noncompliance Point if the Noncompliance Point is subsequently cancelled pursuant to Section 18.4.5.

17.4.6.3 TxDOT shall have the right to deduct and offset liquidated damages from any amounts owing Developer to the extent provided in Section 17.3.5. TxDOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Developer pursuant to this Agreement, except any Handback Requirements Letter of Credit, to satisfy liquidated damages not paid when due.

17.4.6.4 Permitting or requiring Developer to continue and finish the Work or any part thereof after any Service Commencement Deadline or any Final Acceptance Deadline shall not act as a waiver of TxDOT's right to receive liquidated damages hereunder or any rights or remedies otherwise available to TxDOT.

17.4.7 Non-Exclusive Remedy

17.4.7.1 Each item of liquidated damages provided under this Section 17.4 is in addition to, and not in substitution for, any other item of liquidated damages assessed under this Section 17.4.

17.4.7.2 TxDOT's right to, and imposition of, liquidated damages are in addition, and without prejudice, to any other rights and remedies available to TxDOT under this Agreement, at law or in equity respecting the breach, failure to perform or Developer Default that is the basis for the liquidated damages or any other breach, failure to perform or Developer Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate.

17.5 Default by TxDOT; Cure Periods

17.5.1 TxDOT Default

TxDOT shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "TxDOT Default"):

17.5.1.1 TxDOT fails to make any payment due Developer under this Agreement when due, TxDOT fails to make any payment due Developer under the TxDOT Tolling Services Agreement (if any) when due, or TxDOT fails to make the deposit with the trustee under the Facility Trust Agreement of the GP Public Funds Amount as finally determined according to the Dispute Resolution Procedures within 30 days after the final determination as required under Part F, Section 2.4 of Exhibit 7;

17.5.1.2 Any representation or warranty made by TxDOT in this Agreement is false or materially misleading or materially inaccurate when made or omits material information when made;

17.5.1.3 [RESERVED];

17.5.1.4 TxDOT fails to observe or perform any covenant, agreement, term or condition required to be observed or performed by TxDOT under this Agreement or any other FA Document (except the TxDOT Tolling Services Agreement) (other than as specifically provided in any other clause of this Section 17.5.1);

17.5.1.5 An event of default by TxDOT occurs under the Lease; or

17.5.1.6 TxDOT confiscates or appropriates the Facility or any other material part of the Developer's Interest, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement.

For the avoidance of doubt, no TxDOT-Caused Delay, including failure to meet the Milestone Schedule Deadlines for TxDOT Substantial Completion, shall constitute a TxDOT Default.

17.5.2 Cure Periods

TxDOT shall have the following cure periods with respect to the following TxDOT Defaults:

17.5.2.1 Respecting a TxDOT Default under Section 17.5.1.1 or 17.5.1.6, a period of 30 days after Developer delivers to TxDOT written notice of the TxDOT Default; and

17.5.2.2 Respecting a TxDOT Default under Section 17.5.1.2, 17.5.1.4 or 17.5.1.5, a period of 60 days after Developer delivers to TxDOT written notice of the TxDOT Default; provided that (a) if the TxDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and TxDOT has commenced meaningful steps to cure immediately after receiving the default notice, TxDOT shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) as to Section 17.5.1.2, cure will be regarded as complete when the adverse effects of the breach are cured.

17.6 Developer Remedies for TxDOT Default

17.6.1 Termination

Subject to Section 19.9, Developer will have the right to terminate this Agreement and the Lease and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 19.4.

17.6.2 Damages and Other Remedies

Developer shall have and may exercise the following remedies upon the occurrence of a TxDOT Default and expiration, without cure, of the applicable cure period:

17.6.2.1 If Developer does not terminate this Agreement, then, subject to Section 17.6.4, Developer may treat the TxDOT Default as a Compensation Event on the terms and conditions set forth in Section 13.2 and TxDOT shall pay the full Compensation Amount and interest in accordance with Sections 13.2.8 and 13.2.9;

17.6.2.2 If the TxDOT Default is a failure to pay when due any undisputed portion of a progress payment owing under a Change Order and TxDOT fails to cure such TxDOT Default within 30 days after receiving from Developer written notice thereof, Developer shall be entitled to suspend the Work under the Change Order until the default is cured; and

17.6.2.3 Subject to Sections 17.6.4 and 19.9, Developer also shall be entitled to exercise any other remedies available under this Agreement or the Lease or at Law or in equity, including offset rights to the extent and only to the extent available under Section 17.6.3. Subject to Sections 17.6.4 and 19.9, each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

17.6.3 Offset Rights

Developer may deduct and offset any Claim amount owing to it, provided such Claim amount has been liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts Developer may owe to TxDOT. If the Claim amount is not liquidated, Developer may elect to exercise its rights pursuant to the Facility Trust and Security Instruments and direct the transfer of Revenue Payment Amounts from the Toll Revenue Account to the Developer Claims Account up to the amount of the disputed portion of the Claim, in accordance with the provisions of the Facility Trust Agreement. Upon liquidation, the disputed portion of the Claim may be satisfied first from the amounts held in the Developer Claims Account, and then through Developer's offset right with respect to liquidated Claim amounts.

17.6.4 Limitations on Remedies

17.6.4.1 Notwithstanding any other provision of the FA Documents and except as forth in Section 17.6.4.2, to the extent permitted by applicable Law, TxDOT shall not be liable for punitive damages or any indirect, incidental or consequential damages, whether

arising out of breach of this Agreement or the Lease, tort (including negligence) or any other theory of liability, and Developer releases TxDOT from any such liability. Without limiting the foregoing, except as set forth in clause (r) of the definition of "Compensation Event," TxDOT shall not be liable for loss of Toll Revenues or other revenues, or for increases in operating or maintenance costs, attributable to any TxDOT Works Defect or failure of TxDOT to repair and correct the same.

17.6.4.2 The foregoing limitation on TxDOT's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

- (a) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional TxDOT Default), recklessness, bad faith or gross negligence on the part of TxDOT;
- (b) TxDOT's indemnities set forth in Section 7.9.5.4;
- (c) Losses arising out of releases of Hazardous Materials caused by TxDOT;
- (d) Any amounts TxDOT may owe or be obligated to reimburse under the express provisions of this Agreement for Compensation Events or events of termination;
- (e) Any other specified amounts TxDOT may owe or be obligated to reimburse to Developer under the express provisions of the FA Documents;
- (f) Interest and charges that the FA Documents expressly state are due from TxDOT to Developer; and
- (g) Any credits, deductions or offsets that the FA Documents expressly provide to Developer against amounts owing TxDOT.

17.6.4.3 The measure of compensation available to Developer as set forth in this Agreement for a Compensation Event or an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from the State or TxDOT arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from the State or TxDOT. No award of compensation or damages shall be duplicative.

17.6.4.4 Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against TxDOT, except (a) for any sustainable action in mandamus, (b) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 22.4, or to specifically enforce TxDOT's duty of confidentiality under Section 22.4.6, (c) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the FA Documents, or (d) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

17.6.4.5 Without limiting the effect of Section 17.6.4.3, in the event TxDOT wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, Developer's sole remedies against TxDOT shall be extensions of time to the extent provided in Section 13.1 for a Relief Event and damages to the extent provided in Section 13.2 for a Compensation Event.

17.6.5 Procedure for Payment of Judgments

Promptly after any final, non-appealable order or judgment awarding compensation or damages to Developer, TxDOT shall institute payment procedures as set forth in applicable Law and use best efforts to obtain from the Legislature an appropriation for the full amount due. TxDOT shall not hinder or oppose Developer's own efforts to obtain an appropriation for the full amount due.

17.7 Partnering

17.7.1 The provisions of this Section 17.7 are not part of the Informal Resolution Procedures or the Dispute Resolution Procedures contemplated under this Agreement, Transportation Code, Section 201.112 or 223.208 or the Commercial Rules established thereunder. Compliance with the provisions of this Section 17.7 or the terms of any partnering charter is not required as a condition precedent to any Party's right to initiate a claim or seek resolution of any issue under the relevant procedures specified in Section 17.8.

17.7.2 TxDOT and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under this Agreement through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

17.7.3 The objectives of the partnering process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the FA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Facility while recognizing the respective risks inherent in those roles.

17.7.4 In continuance of their existing partnering process, within 90 days after the Effective Date TxDOT and Developer shall attend a team building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Facility. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of TxDOT who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 17.8.9, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of TxDOT and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

17.7.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

17.7.6 If Developer and TxDOT succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

17.8 Dispute Resolution Procedures

17.8.1 General Provisions

17.8.1.1 Disputes Governed by These Procedures

(a) If partnering fails to resolve an issue and Developer elects to pursue a formal Claim or Dispute with TxDOT, the Claim or Dispute shall be resolved pursuant to Transportation Code, Section 201.112, the TxDOT contract claims rules (43 Texas Administrative Code Part 1) 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 this Section 17.8. The Parties agree that the Dispute Resolution Procedures constitute contract claim procedures authorized and governed by Title 43, Texas Administrative Code, Section 9.6, and that the FA Documents shall not be subject to the contract claim procedures set forth in Title 43, Texas Administrative Code, Section 9.2.

(b) All Disputes arising under the FA Documents shall be resolved exclusively pursuant to the Informal Resolution Procedures described in Section 17.8.3 and, if not resolved thereby, the remaining Dispute Resolution Procedures, except any matter identified in Section 17.8.1.5.

(c) Any disagreement between the Parties as to whether the Dispute Resolution Procedures apply to a particular Dispute under the FA Documents, and any disagreement as to whether there has been an adverse Change in Law as described in Section 17.8.1.3 or whether particular procedures apply to a Dispute shall be treated as a Dispute for resolution in accordance with this Section 17.8.

(d) Resolutions of Claims and Disputes pursuant to this Section 17.8 shall be final, binding, conclusive and enforceable.

17.8.1.2 Jurisdiction of Travis County, Texas District Courts

(a) None of the Dispute Resolution Procedures established by this Section 17.8 shall be enforced or interpreted in a way that curtails Developer's right to seek mandamus relief in Travis County, Texas district court pursuant to Transportation Code, Section 223.208(e) or that curtails Developer's right to seek mandamus relief from the Supreme Court of Texas pursuant to Texas Government Code, Section 22.002 in accordance with Section 17.8.5.3(e).

(b) TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Developer, including temporary restraining

orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law.

17.8.1.3 Adverse Change in Law Governing Dispute Resolution Procedures

TxDOT and Developer agree that (a) their procedural rights and remedies under this Section 17.8 are material, substantive, vested contract rights and (b) any change in the Code or the Texas Administrative Code, or the enactment or amendment of any other Law, after the Effective Date that would have a material adverse effect on TxDOT's or Developer's procedural rights or remedies under this Section 17.8 shall constitute a retroactive application of Law impairing vested contract rights and would be unconstitutional under Article I, Section 16, of the Texas Constitution. Therefore, such change shall not be given effect or be applicable to the FA Documents. If, however, such a Change in Law renders it impossible to effectuate the Dispute Resolution Procedures, then the provisions of Section 24.14 will apply; provided that for the purpose of seeking an interpretation or reformation under Section 24.14.3, either Party can refer such question to the Disputes Board or the appropriate court, if any, that declared any portion of the FA Documents invalid. This provision shall prevail over any contrary provision of the FA Documents.

17.8.1.4 Change in Law Authorizing Binding Arbitration

(a) If there is any Change in Law that authorizes TxDOT to enter into binding arbitration to resolve Disputes, the Parties may mutually agree in writing to adopt that procedure as a substitute for the Dispute Resolution Procedures set forth in this Section 17.8.

(b) If the Parties do not attain the mutual agreement described in clause (a) above, then Disputes arising under the FA Documents shall continue to be resolved in accordance with the procedures set forth in this Section 17.8.

17.8.1.5 Matters Ineligible for Dispute Resolution Procedures

The Dispute Resolution Procedures and the authority of the Disputes Board shall not apply to the following, provided that with respect to clauses (c), (d), (i) and (j) below, the Party bringing the Claim or Dispute may elect, at its option, to invoke the Informal Resolution Procedures prior to taking other action:

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

(b) Any claim or dispute that does not arise under the FA Documents, except that a claim or dispute between NTTA and TxDOT under the NTTA Tolling Services Agreement that arises out of, results in or includes an essentially identical claim or dispute between TxDOT and Developer shall be included in the same Dispute Resolution Procedures and the authority of the Disputes Board, and TxDOT shall have the right to interplead NTTA, and NTTA shall have the right to intervene, into such Dispute Resolution Procedures;

(c) Any equitable relief sought in Travis County, Texas district court that TxDOT is permitted to bring against Developer under Section 17.8.1.2;

(d) Any Claim or Dispute arising solely in tort;

(e) Any claim to interplead a Party into an action brought by a third Person against the other Party or by the other Party against a third Person;

(f) Claims and Disputes that are not actionable against TxDOT by Developer on its own behalf;

(g) Any claim by a Contractor, including any such claim against Developer that gives rise to an independent but related claim by Developer against TxDOT (but the Dispute Resolution Procedures will apply to any such independent related claim by Developer against TxDOT);

(h) Any claims or disputes against insurance companies;

(i) Any Claims and Disputes based on remedies expressly created by statute; and

(j) Any mandamus action that Developer is permitted to bring against TxDOT under Section 17.8.1.2.

17.8.1.6 Burden of Proof

The Party bringing a Claim or Dispute shall bear the burden of proving the same.

17.8.2 Informal Resolution As Condition Precedent

The claiming Party must first attempt to resolve the Dispute directly with the responding Party through the Informal Resolution Procedures described in Section 17.8.3, as a condition precedent to the right to have any Dispute (other than those set forth in Section 17.8.1.5) resolved pursuant to the remaining Dispute Resolution Procedures. Time limitations set forth for those Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for Informal Resolution Procedures applicable to any other or subsequent Disputes.

17.8.3 Informal Resolution Procedures

17.8.3.1 Notice of Dispute to Designated Agent

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

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

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

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

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

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

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

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

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

(ix) Any other information the claiming Party considers relevant.

(b) The notice shall be signed by the Authorized Representative of the claiming Party, and shall contain a written certification by the claiming Party that:

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

(ii) Except as to specific matters stated in the notice as being unknown or subject to discovery, all supporting information is reasonably believed by the claiming Party to be accurate and complete;

(iii) The Dispute accurately reflects the amount of money or other right, remedy or relief to which the claiming Party reasonably believes it is entitled; and

(iv) The Authorized Representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party.

(c) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a written response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing.

17.8.3.2 CEO / Executive Director Meetings

If the Dispute is not resolved pursuant to Section 17.8.3.1(c), then commencing within ten Business Days (five Business Days for Fast-Track Disputes) after the notice of Dispute is

served and concluding ten Business Days thereafter, the Chief Executive Officer of Developer and the Executive Director or the Executive Director's designate whose rank is not lower than Assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Developer and TxDOT shall memorialize the resolution in writing.

17.8.3.3 Failure to Resolve Dispute With Informal Resolution Procedures

(a) If a Dispute is submitted to but not timely resolved under the Informal Resolution Procedures, then the Parties may mutually agree to initiate mediation or other alternative dispute resolution process in accordance with Section 17.8.7.

(b) If a Dispute is submitted to but not timely resolved under the Informal Resolution Procedures or by mediation or other alternative dispute resolution process, or the Parties do not mutually agree to initiate mediation or other alternative dispute resolution process, either Party may:

(i) Refer the Dispute to the Disputes Board for resolution pursuant to Section 17.8.4.2; or

(ii) Pursue any other relief that may be available in a Travis County, Texas district court in accordance with Section 17.8.1.2.

17.8.4 Disputes Board; Finality of Disputes Board Decision

17.8.4.1 Disputes Board Agreement

(a) The Disputes Board Agreement is Exhibit 19. It governs the establishment and membership of the Disputes Board and matters of evidence and procedure that are not otherwise addressed in this Section 17.8.

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

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

(d) The Disputes Board shall have the authority to resolve any Dispute other than those identified in Section 17.8.1.5.

(e) The Disputes Board shall have no authority to order that one Party compensate the other Party for attorneys' fees and expenses, except for attorneys' fees and expenses payable to TxDOT under Sections 7.4.3, 16.5.1.6 and 22.3.3 and except for defense costs payable pursuant to an indemnity obligation under this Agreement.

(f) If a Disputes Board Decision awards an amount payable by one Party to the other, it is due and payable on the date required for payment in accordance with

the FA Documents. If the date of payment is not specified in the FA Documents, the payment shall be due ten Business Days after the date the Disputes Board Decision becomes final and binding.

17.8.4.2 Submission of Dispute to Disputes Board

Within 15 days after the end of the CEO / Executive Director meetings described in Section 17.8.3.2 or the end of any mediation conducted pursuant to Sections 17.8.3.3(a) and 17.8.7, whichever is later, either Party may refer a Dispute to the Disputes Board for resolution by serving written notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 17.8.3.1(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a written response upon the claiming Party's designated agent. The response shall be signed by the Authorized Representative of the responding Party, and shall include certifications that (a) the response is served in good faith, (b) if any supporting information is included in the response, it is reasonably believed by the responding Party to be accurate and complete, except as to specific matters unknown or subject to discovery, and (c) the Authorized Representative is duly authorized to execute and deliver the response and such certification on behalf of the responding Party. Thereafter, the Parties shall proceed under the Disputes Board Agreement to obtain a Disputes Board Decision pursuant to Section 5.5 of the Disputes Board Agreement (Exhibit 19).

17.8.4.3 Failure of Notice to Meet Certification Requirements

If the notice of Dispute fails to meet the certification requirements under Section 17.8.3.1(b), on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete written certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected.

17.8.5 SOAH Administrative Hearings and Final Orders

17.8.5.1 Appeal of Disputes Board Decision

(a) If either Party believes that Grounds for Appeal affected a Disputes Board Decision, then within 20 days after the Disputes Board's issuance to TxDOT and Developer of the subject Disputes Board Decision that Party may request the Executive Director to seek a formal administrative hearing before the State Office of Administrative Hearings ("SOAH") pursuant to Texas Government Code, Chapter 2001, and Transportation Code, Section 201.112. Grounds for Appeal shall be the sole basis for appeal of a Disputes Board Decision. Within ten Business Days of a request for a formal administrative hearing before SOAH, the Executive Director shall refer the matter to SOAH.

(b) If there is not a timely request for a formal administrative hearing before SOAH based on Grounds for Appeal, then within ten Business Days after the expiration of the deadline for such a request, the Executive Director shall issue a final order that implements the Disputes Board Decision. If the Executive Director does not issue the final order implementing the Disputes Board Decision within such ten Business Days, the Disputes

Board Decision shall become effective as the final order of the Executive Director effective on the next Business Day.

17.8.5.2 SOAH Proceeding and ALJ Proposal for Decision

Upon referral to SOAH of the question of whether Grounds for Appeal affected the Disputes Board Decision, the Administrative Law Judge (“ALJ”) shall conduct a hearing in accordance with the SOAH regulations solely on the question of whether Grounds for Appeal affected the subject Disputes Board Decision. The Disputes Board's findings of fact, conclusions of law and Disputes Board decision; any dissenting findings, recommendations or opinions of a minority Disputes Board member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue its written proposal for decision in accordance with SOAH regulations to the Executive Director and Developer. A Party may file exceptions to the proposal for decision no later than seven days after issuance of the proposal for decision. A Party may file a reply to exceptions no later than 14 days after issuance of the proposal for decision. The ALJ may comment on the exceptions and replies no later than 21 days after issuance of the proposal for decision.

17.8.5.3 Final Orders of Executive Director

(a) Within 28 days after receipt of the ALJ's proposal for decision the Executive Director shall issue a final order.

(b) If the Executive Director concludes that Grounds for Appeal prejudiced the rights of a party or affected the Disputes Board Decision, the Executive Director shall rule that the Disputes Board Decision is invalid and shall remand the Dispute to the Disputes Board for reconsideration; provided that if the Grounds for Appeal is that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 as beyond the Disputes Board's authority, then the Executive Director shall vacate the Disputes Board Decision and dismiss the matter, without remand and without prejudice to the claiming Party's right to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the nature of the Grounds for Appeal was a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct, then a reconstituted Disputes Board that does not include that Disputes Board member must reconsider the remanded Dispute.

(c) If the Executive Director concludes that Grounds for Appeal did not affect the Disputes Board Decision, the Executive Director shall affirm the Disputes Board Decision and order its implementation.

(d) If the Executive Director fails to issue a final order within the 28-day time period, then on the next Business Day, the proposal for decision is deemed accepted by the Executive Director as the correct decision and becomes the final order in the Dispute. In such event:

(i) If the ALJ determined that Grounds for Appeal prejudiced the rights of a party or affected the Disputes Board Decision, the Disputes Board Decision shall be deemed invalid, and the Dispute shall be remanded to the Disputes Board for reconsideration; provided that if the Grounds for Appeal is that the claim, demand, dispute, disagreement or controversy is a matter identified in Section 17.8.1.5 as beyond the Disputes

Board's authority, then the Disputes Board Decision shall be deemed vacated and the matter shall be deemed dismissed, without remand and without prejudice to the claiming Party's right to pursue the claim, demand, dispute, disagreement or controversy in the proper jurisdiction. If the nature of the Grounds for Appeal was a Disputes Board Member Conflict of Interest or Disputes Board Member Misconduct, then a reconstituted Disputes Board that does not include that Disputes Board member must reconsider the remanded Dispute.

(ii) If the ALJ determined that the decision of the Disputes Board was not affected by Grounds for Appeal, the ALJ's proposal for decision shall be deemed adopted and the Disputes Board Decision shall be deemed affirmed by the Executive Director and the Parties shall implement the decision of the Disputes Board unless it is overturned on appeal pursuant to Section 17.8.6 .

(e) The Parties agree and acknowledge that the Executive Director's issuance of a final order under this Section 17.8.5.3 is a purely ministerial act. Accordingly, notwithstanding any other provision in this Agreement, Developer shall be entitled to seek mandamus relief pursuant to Texas Government Code, Section 22.002(c), if the Executive Director fails to timely seek an administrative hearing before SOAH under Section 17.8.5.1(a), issue a final order under Section 17.8.5.1(b), or issue a final order under this Section 17.8.5.3.

17.8.6 Judicial Appeal of Final Orders Under Substantial Evidence Rule

17.8.6.1 A final order under Section 17.8.5.3 shall be a final order subject to judicial appeal under Transportation Code, Section 201.112(d).

17.8.6.2 Pursuant to Texas Government Code, Section 2001.144(a)(4), TxDOT and Developer hereby agree that the date of issuance for any final order under Section 17.8.5.3 shall be the actual date of issuance by the Executive Director or the date the ALJ's proposal for decision becomes the final order in the Dispute, so that the filing of a motion for rehearing shall not be a prerequisite for appeal, as provided in Texas Government Code, Section 2001.145(a).

17.8.7 Mediation or Other Alternative Dispute Resolution

Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation or other alternative dispute resolution process for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation or other alternative dispute resolution process. Developer and TxDOT shall share equally the expenses of the mediation or other alternative dispute resolution process. If any Dispute has been referred to mediation or other alternative dispute resolution process for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party shall have the right, on or after the 31st day, to cease participating in such mediation or other alternative dispute resolution process. A Party shall give written notice to the other Party that it will no longer participate. The deadlines in this Section 17.8 for processing a Dispute are tolled, day for day, during mediation or other alternative dispute resolution.

17.8.8 Independent Engineer Evidence

17.8.8.1 The Independent Engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations shall be treated as part of the record under review, shall be admissible in any proceeding before the Disputes Board or any court and shall be accorded substantial weight by the Disputes Board. No Party shall have any right to unilaterally seek, order or obtain from the Independent Engineer and introduce into evidence any further written evaluations, opinions, reports, recommendations, objections, decisions, certifications or other determinations respecting a Dispute after it is first asserted, whether in support or defense of the Party's position on such Dispute. However, either Party and/or the Disputes Board shall have the right to call the Independent Engineer to give oral or written testimony to explain or clarify the Independent Engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations.

17.8.8.2 Wherever in this Agreement or the Technical Provisions it is stated that the Independent Engineer's written evaluations, opinions, findings, reports, recommendations, objections, decisions, certifications or other determinations are to be given substantial weight in resolving Disputes, such provision does not preempt or substitute for the exercise of independent judgment by the Disputes Board or court and does not affect each Parties' right to discovery and presentation of other or contradictory evidence, including evidence relevant to the credibility of the Independent Engineer or error, omission, inconsistency, inaccuracy or deficiency by the Independent Engineer in applying the relevant requirements and provisions of the FA Documents to the matter that is the subject of the Dispute.

17.8.9 Settlement Negotiations Confidential

17.8.9.1 All discussions, negotiations and Informal Resolution Procedures described in Section 17.8.3 between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, or Informal Resolution Procedures, shall, to the extent allowed by Law, be considered confidential and not subject to disclosure by either Party.

17.8.9.2 During any Disputes Board, SOAH or judicial proceeding regarding a Dispute, all information that has been deposited in an Intellectual Property Escrow pursuant to Section 22.5 shall be available as evidence but treated as confidential to the extent allowed by Law and subject to a protective order issued by the Disputes Board, ALJ or court to protect the information from public disclosure.

17.8.9.3 The Parties may also request a protective order in any Disputes Board, SOAH or judicial proceeding to prohibit the public disclosure of any other information they believe is confidential. Determinations of such requests by the Disputes Board, ALJ or court shall be governed by the standards in the Texas Rules of Evidence and Texas Rules of Civil Procedure.

17.8.10 Venue and Jurisdiction

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

17.8.11 Continuation of Disputed Work

17.8.11.1 At all times during the pendency of resolution of a Dispute relating to the Work or the TxDOT Works under the Dispute Resolution Procedures (including Informal Resolution Procedures), the Parties shall continue to comply with all provisions of the FA Documents, the Facility Management Plan, the Governmental Approvals and applicable Law.

17.8.11.2 Developer and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its sole discretion. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Work under the Dispute Resolution Procedures even if Developer's position in connection with the Dispute ultimately prevails. Throughout the course of any Work that is the subject of any Dispute that is the subject of Dispute Resolution Procedures, Developer shall keep separate and complete records of any extra costs, expenses, loss of Toll Revenues and/or other monetary effects relating to the disputed Work and/or its resolution under the Dispute Resolution Procedures, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. The Disputes Board shall have similar access to all such records. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the FA Documents).

17.8.11.3 TxDOT and all its subcontractors shall continue with the performance of the TxDOT Works and their obligations, including any disputed TxDOT Work or obligations, diligently and without delay, except to the extent enjoined by order of a court or otherwise approved by Developer in its sole discretion. TxDOT acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the TxDOT Works under the Dispute Resolution Procedures even if TxDOT's position in connection with the Dispute ultimately prevails. Throughout the course of any TxDOT Work that is the subject of any Dispute that is the subject of Dispute Resolution Procedures, TxDOT shall keep separate and complete records of any extra costs, expenses and/or other monetary effects relating to the disputed TxDOT Work and/or its resolution under the Dispute Resolution Procedures, and shall permit Developer access to these and any other records needed for evaluating the Dispute. The Disputes Board shall have similar access to all such records. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the FA Documents).

17.9 Waiver of Consumer Rights

TXDOT AND DEVELOPER HAVE ASSESSED THEIR RESPECTIVE RIGHTS, LIABILITIES AND OBLIGATIONS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, BUSINESS & COMMERCE CODE, SECTION 17.41 *ET SEQ.* (THE "DTPA"). TXDOT AND DEVELOPER AGREE THAT THE DTPA DOES NOT APPLY TO ANY CLAIM OR DISPUTE UNDER ANY FA DOCUMENT SINCE THE TRANSACTIONS EVIDENCED BY THE FA DOCUMENTS INVOLVE A TOTAL CONSIDERATION BY EACH OF TXDOT AND DEVELOPER IN EXCESS OF \$500,000. HOWEVER, IN THE EVENT THE DTPA IS DEEMED TO BE APPLICABLE BY A COURT OF

COMPETENT JURISDICTION, TXDOT AND DEVELOPER HEREBY WAIVE THEIR RIGHTS AGAINST ONE ANOTHER AND AGAINST THEIR RESPECTIVE DEVELOPER-RELATED ENTITIES AND INDEMNIFIED PARTIES UNDER THE DTPA, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH ATTORNEYS OF THEIR OWN SELECTION, TXDOT AND DEVELOPER VOLUNTARILY CONSENT TO THIS WAIVER. THE PARTIES AGREE THAT THIS SECTION 17.9 CONSTITUTES A CONSPICUOUS LEGEND.

ARTICLE 18. NONCOMPLIANCE POINTS

18.1 Noncompliance Points System

Attachment 1 to Exhibit 18 sets forth a table for the identification of Developer breaches or failures in performance of obligations under the FA Documents that may result in the assessment of Noncompliance Points. Noncompliance Points are a system to measure Developer performance levels and trigger the remedies set forth or referenced in this Article 18. The inclusion in Attachment 1 to Exhibit 18 of a breach or failure to perform bears no implication as to whether the breach or failure is material.

18.2 Assessment Notification and Cure Process

18.2.1 Notification

18.2.1.1 Developer shall notify TxDOT and the Independent Engineer in writing of the occurrence of any breach or failure specified in Attachment 1 to Exhibit 18. Developer shall deliver such notice in writing as soon as reasonably practicable, and in any event within 48 hours, after Developer first obtains knowledge of or first reasonably suspects the breach or failure. The notice shall describe the breach or failure in reasonable detail. Within ten days of receiving the notice, the Independent Engineer shall deliver to both Parties written notice setting forth his or her recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof. Thereafter, TxDOT shall deliver to Developer a written notice setting forth TxDOT's determination whether to assess Noncompliance Points (a "notice of determination"). This Section 18.2.1.1 shall not apply where Developer first obtains knowledge and reasonable suspicion through a notice from the Independent Engineer or TxDOT under Sections 18.2.1.2 or 18.2.1.3.

18.2.1.2 The Independent Engineer's duties shall include delivering written notice to TxDOT and Developer immediately upon discovery of the occurrence of any breach or failure specified in Attachment 1 to Exhibit 18, and of the cure period and Noncompliance Points to be assessed with respect thereto. Such discovery shall include matters raised with the Independent Engineer following the compliance monitoring and reporting procedures as set forth in the Facility Management Plan. No such notification from the Independent Engineer, standing alone, shall be effective to impose Noncompliance Points, which right is reserved exclusively to TxDOT. The notice also shall set forth the Independent Engineer's recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof. Thereafter, TxDOT shall deliver to Developer a written notice of determination.

18.2.1.3 If TxDOT believes there has occurred any breach or failure to perform specified in Attachment 1 to Exhibit 18, TxDOT may deliver to Developer and the Independent Engineer written notice thereof setting forth the breach or failure, the applicable

cure period and the Noncompliance Points to be assessed with respect thereto. Within ten days of receiving the notice, the Independent Engineer shall deliver to both Parties written notice setting forth his or her recommendation whether to assess Noncompliance Points, and reasoning and analysis in support thereof. Thereafter, TxDOT shall deliver to Developer a written notice of determination.

18.2.2 Cure Periods

18.2.2.1 Developer shall have the cure period (if any) for each breach or failure set forth in Attachment 1 to Exhibit 18.

18.2.2.2 For breaches or failures identified by the assessment category “A” in Attachment 1 to Exhibit 18, Developer’s cure period (if any) with respect to such breach or failure shall be deemed to start upon the date Developer first obtained knowledge or reason to know of the breach or failure. For this purpose, Developer shall be deemed to first obtain knowledge or reason to know of the breach or failure not later than the date of delivery of the initial notice to Developer.

18.2.2.3 For breaches or failures identified by the assessment category “B” in Attachment 1 to Exhibit 18, Developer’s cure period shall be deemed to start upon the date that the breach or failure occurred, regardless of whether an initial notice has been delivered to Developer.

18.2.2.4 Each of the cure periods set forth in Attachment 1 to Exhibit 18 shall be the only cure period for Developer applicable to the breach or failure; and in the event it differs from any cure period set forth in Section 17.1.2 that might otherwise apply to the breach or failure, it shall control.

18.2.3 Notification of Cure

When Developer determines that it has completed cure of any breach or failure for which it is being assessed Noncompliance Points, Developer shall deliver written notice to TxDOT and the Independent Engineer identifying the breach or failure, stating that Developer has completed cure and briefly describing the cure, including any modifications to the Facility Management Plan to protect against future similar breaches or failures. Thereafter, the Independent Engineer shall promptly inspect to verify completion of the cure and, if satisfied that the breach or failure is fully cured, shall deliver to TxDOT and Developer a written certification of cure. TxDOT may independently inspect and may accept or reject such written certification. If the Independent Engineer fails to deliver a certification of cure within 30 days, or if TxDOT rejects the certification, any Dispute shall be resolved according to the Dispute Resolution Procedures.

18.3 Assessment of Noncompliance Points

18.3.1 If at any time TxDOT serves notice of determination under Section 18.2 or notice of Developer breach or failure to perform under this Agreement, then, without prejudice to any other right or remedy available to TxDOT, TxDOT may assess Noncompliance Points in accordance with Exhibit 18, subject to the following terms and conditions.

18.3.1.1 The date of assessment shall be deemed to be the date of the initial notification under Section 18.2.

18.3.1.2 TxDOT shall not be entitled to assess Noncompliance Points under more than one category for any particular event or circumstance that is a breach or failure. Except as provided in Section 18.3.1.3, where a single act or omission gives rise to more than one breach or failure, it shall be treated as a single breach or failure for the purpose of assessing Noncompliance Points, and the highest amount of Noncompliance Points under the relevant breaches or failures shall apply.

18.3.1.3 A failure by Developer to report to TxDOT and the Independent Engineer a breach or failure to perform as and when required under Section 18.2.1.1, on the one hand, and the subject breach or failure to perform, on the other hand, constitute separate and distinct breaches and failures to perform for the purpose of assessing Noncompliance Points.

18.3.1.4 Except as otherwise set forth in this Section 18.3.1, the number of points listed in Attachment 1 to Exhibit 18 for any particular breach or failure is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a breach or failure, and TxDOT may, but is not obligated to, assess less than the maximum.

18.3.1.5 If a breach or failure for which a cure period is provided in Attachment 1 to Exhibit 18 is not fully and completely cured within the applicable cure period, then continuation of such breach or failure beyond such cure period shall be treated as a new and separate breach or failure, without necessity for further notice, for the purpose of assessing Noncompliance Points. Accordingly, a new cure period equal to the prior cure period shall commence upon expiration of the prior cure period, without further notice; and, if applicable, payment of a further amount of liquidated damages under Sections 17.4.1.1 and 17.4.1.2 shall be required. Regardless of the continuing assessment of Noncompliance Points under this Section 18.3.1, TxDOT shall be entitled to exercise its step-in rights under Section 17.3.4 and, if applicable, its work suspension rights under Section 17.3.8, after expiration of the initial cure period available to Developer. However, if and when TxDOT commences to exercise its step-in rights (after any prior opportunity of Lenders to exercise their step-in rights has expired without exercise), assessment of Noncompliance Points shall cease to continue with regard to the subject breach or failure.

18.3.1.6 For breaches or failures identified by the assessment category “A” in Attachment 1 to Exhibit 18, provided that the breach or failure is not cured, the Noncompliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in Section 18.3.1.5.

18.3.1.7 For breaches or failures identified by the assessment category “B” in Attachment 1 to Exhibit 18, the Noncompliance Points shall first be assessed on the date of the initial notification under Section 18.2 (the start of the first cure period). Provided that the breach or failure is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period, as described in Section 18.3.1.5.

18.3.1.8 For breaches or failures identified by the assessment category “C” in Attachment 1 to Exhibit 18 (no applicable cure period), the Noncompliance Points shall first be assessed on the date of the initial notification under Section 18.2 (the start of the first cure period), and continuation of such a breach or failure shall not be treated as a new or separate breach or failure.

18.3.2 The Independent Engineer's responsibilities shall include keeping current records of the number of assessed Noncompliance Points and Uncured Noncompliance Points, and the date of each assessment and each cure. The Independent Engineer's responsibilities shall include reporting such information to TxDOT and Developer in writing at frequencies specified in the Independent Engineer Joint Work Authorization and otherwise upon written request from TxDOT or Developer.

18.3.3 For the avoidance of doubt, in no event shall Noncompliance Points be assessed against Developer as a result of a failure by TxDOT to achieve TxDOT Substantial Completion in accordance with Section 25.3.6.1 by the applicable Milestone Schedule Deadline.

18.4 Provisions Regarding Dispute Resolution

18.4.1 Developer may object to the assessment of Noncompliance Points or the starting point for the cure period respecting any breach or failure listed in Exhibit 18, by delivering to TxDOT and the Independent Engineer written notice of such objection not later than five days after the Independent Engineer or TxDOT delivers its written notice of such breach or failure.

18.4.2 Developer may object to TxDOT's rejection of any certification of completion of a cure given pursuant to Section 18.2.3 by delivering to TxDOT and the Independent Engineer written notice of such objection not later than 15 days after TxDOT delivers its written notice of rejection.

18.4.3 If for any reason Developer fails to deliver its written notice of objection within the applicable time period, Developer shall be conclusively deemed to have accepted the matters set forth in the applicable TxDOT or Independent Engineer notice, and shall be forever barred from challenging them.

18.4.4 If Developer gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures.

18.4.5 Pending the resolution of any Dispute arising under this Section 18.4, the provisions of this Article shall take effect as if the matter were not in Dispute, provided that if the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or duration of the cure period must be adjusted, or (d) a breach or failure has been cured, then the number of Noncompliance Points assigned or assessed, the Uncured Noncompliance Points balance and the related liabilities of Developer shall be adjusted to reflect such decision.

18.4.6 Pending the resolution of any Dispute arising under this Section 18.4, the number of Noncompliance Points in Dispute shall not be counted for the purpose of determining whether TxDOT may issue a Warning Notice under Section 17.2.1 for failure to timely submit or comply with the remedial plan.

18.4.7 The opinion of the Independent Engineer shall receive substantial weight in resolving any Dispute arising under this Section 18.4.

18.5 Increased Oversight, Testing and Inspection

18.5.1 If at any time (a) Developer is assessed Uncured Noncompliance Points in excess of any trigger point set forth in Exhibit 18 for liquidated damages under Section 17.4.2.2, (b) there exists a Persistent Developer Default or (c) Developer receives one or more Warning Notices, then in addition to other remedies available under this Agreement, the Lease and the Principal Facility Documents, TxDOT shall be entitled upon written notice to Developer to increase the level of its and the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Facility and Developer's compliance with its obligations under the FA Documents, to such level as TxDOT sees fit, until such time as Developer has demonstrated to the reasonable satisfaction of TxDOT that Developer:

18.5.1.1 Has reduced the number of Uncured Noncompliance Points below the threshold triggering such heightened scrutiny;

18.5.1.2 Has reduced by 50% the number of Uncured Noncompliance Points outstanding on the date TxDOT delivers the written notice invoking such heightened scrutiny;

18.5.1.3 Has fully and completely cured the breaches and failures that are the basis for any Warning Notices; and

18.5.1.4 Has completed delivery and performance of an approved remedial plan, if at any time during which TxDOT is so entitled to increase the level of oversight TxDOT also requires Developer to prepare and implement a remedial plan pursuant to Section 17.3.6.

18.5.2 If TxDOT increases the level of its and/or the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight under Section 18.5.1 and liquidated damages are not provided for under this Agreement in connection with such action, then Developer shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all increased costs and fees TxDOT incurs in connection with such action, including TxDOT's Recoverable Costs and TxDOT's share of the increased costs and fees of the Independent Engineer.

18.5.3 The foregoing does not preclude TxDOT, at its sole discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and oversight at other times.

ARTICLE 19. TERMINATION

19.1 Termination for Convenience; Certain Terminations Prior to Financial Close

19.1.1 Termination for Convenience

19.1.1.1 At any time after the Recalibration Date, TxDOT may terminate this Agreement and the Lease in whole, but not in part, if TxDOT determines, in its sole discretion, that a termination is in TxDOT's best interest (a "Termination for Convenience"). Termination of this Agreement and the Lease shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

19.1.1.2 TxDOT may exercise Termination for Convenience by delivering to Developer a written Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Section G.1 of Exhibit 20.

19.1.1.3 TxDOT shall be deemed to have exercised Termination for Convenience of the entire Agreement and Lease if all of the following circumstances exist:

(a) A third party, the State or TxDOT brings a legal action in a court of competent jurisdiction, TxDOT asserts a Claim under the Dispute Resolution Procedures, or TxDOT defends a Claim under the Dispute Resolution Procedures or in a court of competent jurisdiction by challenging the authority for or the validity or enforceability of, or seeking to enjoin performance by TxDOT or the trustee under the Facility Trust Agreement on grounds of the lack of authority for or the invalidity or unenforceability of (i) the obligation of TxDOT set forth in this Agreement to pay or cause to be paid the GP Public Funds Amount, (ii) the calculation methodology for determining the GP Public Funds Amount set forth in this Agreement, or (iii) the trust arrangements for the GP Public Funds Amount set forth in the Facility Trust Agreement;

(b) Either (i) a court of competent jurisdiction issues a final, non-appealable order in such action, or (ii) the Dispute Board issues a Disputes Board Decision declaring unenforceable, void or invalid, or permanently enjoining performance by TxDOT or the trustee under the Facility Agreement of, (i) the obligation of TxDOT set forth in this Agreement to pay or cause to be paid the GP Public Funds Amount, (ii) the calculation methodology for determining the GP Public Funds Amount set forth in this Agreement, or (iii) any material portion of the trust arrangements for the GP Public Funds Amount set forth in the Facility Trust Agreement; and

(c) TxDOT issues notice to proceed to its contractor, or NTP GP to Developer, for the construction of the GP Capacity Improvements or any portion thereof, or any such construction shall have otherwise commenced at the direction or with the approval of TxDOT or the State.

19.1.1.4 In the event of a Termination for Convenience, Developer will be entitled to compensation determined in accordance with Exhibit 20. Payment will be due and payable as and when provided in Exhibit 20.

19.1.1.5 If TxDOT terminates this Agreement and the Lease on grounds or in circumstances beyond TxDOT's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the Termination Compensation due.

19.1.1.6 In the event of a Termination for Convenience after the Recalibration Date and prior to Financial Close, TxDOT shall return the Financial Option Security to Developer within three Business Days from such termination.

19.1.1.7 TxDOT and Developer agree to apply Section 371.101(e) of the Texas Transportation Code and Section 27.10(e) of the Rules to the determination of Termination Compensation upon a Termination for Convenience to the extent set forth in Exhibit 20. Not later than 12 months before the start of a new price interval, Developer shall notify TxDOT of the applicable Termination Compensation amount set forth in Exhibit 20 for

that price interval. For this purpose, “price interval” means each time interval set forth in Attachment 1 to Exhibit 20 for which a Termination Compensation amount is provided. TxDOT shall notify Developer if it will exercise the option to terminate this Agreement and the Lease pursuant to Section 19.1.1.2 during the price interval not later than six months after receiving Developer’s notice. TxDOT may rescind a notice of the exercise of an option to terminate without liability. For the avoidance of doubt, notice by TxDOT that it will exercise such option to terminate does not constitute notice of termination under Section 19.1.1.2, and notice by TxDOT that it will not exercise such option does not preclude TxDOT from later terminating this Agreement and the Lease pursuant to Section 19.1.1.2 so long as TxDOT provides the required notice of termination under Section 19.1.1.2 and otherwise satisfies the requirements of Section G.1 of Exhibit 20.

19.1.2 Certain Terminations Prior to Financial Close

19.1.2.1 If Developer fails to submit an alternative Facility Plan of Finance to TxDOT within the time period specified in Section 4.1.4.5(a)(1), this Agreement shall terminate upon the expiration of such time period.

19.1.2.2 If Developer submits an alternative Facility Plan of Finance in accordance with Section 4.1.4.5(a)(1) and TxDOT rejects Developer’s alternative Facility Plan of Finance within the time period specified in Section 4.1.4.5(a)(2), this Agreement shall terminate upon TxDOT’s delivery of written notice to Developer of such rejection.

19.1.2.3 If Developer fails to provide written notice to TxDOT of its proposed Recalibration Date or any related materials and information set forth in Section 4.1.4.5(b)(i) within the time period specified in Section 4.1.4.5(b)(i), this Agreement shall terminate upon the expiration of such time period.

19.1.2.4 In the event of any termination pursuant to Section 19.1.2.1, 19.1.2.2 or 19.1.2.3:

(a) Developer shall be entitled to compensation determined in accordance with Section B.8 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer’s right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.1.2.5 TxDOT may exercise its right to terminate pursuant to Section 4.1.4.5(h)(iii)(A) by delivering to Developer written notice of termination. If TxDOT delivers such written notice, such termination shall be effective one Business Day after delivery of the written notice. In addition, if TxDOT fails to notify Developer that it will proceed with the Facility in accordance with Section 4.1.4.5(h)(iii), TxDOT shall be deemed to have terminated this Agreement and such termination shall be effective one Business Day after the expiration

of the time period provided to TxDOT in Section 4.1.4.5(h)(iii). In the event of any such termination:

(a) Developer shall be entitled to compensation determined in accordance with Section B.8 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.1.2.6 If TxDOT has the right to terminate this Agreement pursuant to Section 4.1.4.5(f) or 4.1.4.5(h)(iii)(B), TxDOT shall exercise such right upon TxDOT's delivery to Developer of written notice and such termination shall be effective one Business Day after delivery by TxDOT of such written notice. If this Agreement is terminated pursuant to Section 4.1.4.5(d), such termination shall be effective one Business Day after TxDOT provides the notice set forth in Section 4.1.4.5(c). In the event of either such termination:

(a) Developer shall be entitled to compensation determined in accordance with Section B.9 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.1.2.7 If TxDOT terminates the Agreement pursuant to Section 4.1.4.5(i), such termination shall be effective one Business Day after delivery by TxDOT of written notice. In the event of such termination:

(a) Developer shall be entitled to compensation determined in accordance with Section B.10 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim

deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.1.2.8 If a Public Funds Amount in excess of \$30 million results under Section 4.1.4.8 due to the adjustment under Section 4.1.4.6, provided that the minimum Public Funds Amount of \$24.2 million is excluded from such calculation, then TxDOT shall have the right to elect either to (a) pay the Public Funds Amount in accordance with Part C of Exhibit 7 or (b) subject to Section 19.1.2.9, terminate this Agreement. TxDOT shall make this election by written notice to Developer delivered within four Business Days after such date. If TxDOT does not deliver such notice within such four Business Day period, TxDOT shall be deemed to have elected to terminate this Agreement, subject to Section 19.1.2.6. If the Developer Closing Payment exceeds \$45 million, then Developer shall have the right to elect either to (a) pay such Developer Closing Payment or (b) subject to Section 19.1.2.9, terminate this Agreement. Developer shall make this election by providing written notice to TxDOT delivered within four Business Days following such date. If Developer does not deliver such notice with such four Business Day period, Developer shall be deemed to have elected to terminate this Agreement, subject to Section 19.1.2.9.

19.1.2.9 If either Party elects or is deemed to have elected to terminate this Agreement pursuant to Section 19.1.2.8, such termination shall become effective one Business Day following Developer's or TxDOT's, as applicable, receipt of such notice unless Developer notifies TxDOT in writing within such one Business Day period that it is willing to proceed with the Facility without any payment or other compensation for the Public Funds Amount in excess of \$30 million, provided that the minimum Public Funds Amount of \$24.2 million is excluded from such calculation, or TxDOT notifies Developer in writing within such one Business Day period that it is willing to proceed with the Facility without any payment or other compensation of the Developer Closing Payment in excess of \$45 million. In the event of a termination under Section 19.1.2.8, then:

(a) Developer shall be entitled to compensation determined in accordance with Section B.8 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.1.2.10 If either Party has the right to terminate pursuant to Section 4.1.4.4(a), then such Party shall exercise its right to terminate upon delivery to the other Party of written notice and such termination shall be effective one Business Day after delivery of such written notice. In the event of any such termination:

(a) Developer shall be entitled to compensation determined in accordance with Section B.8 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.1.2.11 If either Party has the right to terminate pursuant to Section 4.1.4.4(b), then such Party shall exercise its right to terminate upon delivery to the other Party of written notice and such termination shall be effective one Business Day after delivery of such written notice. In the event of any such termination:

(a) Developer shall be entitled to compensation determined in accordance with Section B.9 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.6 of Exhibit 20; and

(b) (i) All the FA Documents and the Independent Engineer Joint Work Authorization shall be deemed rescinded; (ii) within three Business Days after the termination occurs, Developer and TxDOT shall cancel the Lease Escrow Agreement and the escrowed documents shall be returned to TxDOT; (iii) within three Business Days after the termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way; and (iv) within three Business Days after the termination occurs, TxDOT shall return the Financial Option Security to Developer.

19.2 Termination for Force Majeure Event or Extended Relief Event

19.2.1 Notice of Conditional Election to Terminate

Either Party may deliver to the other Party written notice of its conditional election to terminate this Agreement and the Lease under the following circumstances:

19.2.1.1 A Force Majeure Event or Extended Relief Event has occurred;

19.2.1.2 With respect to a Force Majeure Event, either:

(a) Such notice is delivered before the Service Commencement Date for one or more Facility Segments, the period of delay that is directly attributable to the Force Majeure Event and affects a Critical Path for performance and completion of the Construction Work, after consumption of Float available pursuant to Section 7.7.6, is 270 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such delay is not attributable to another concurrent delay; or

(b) Such notice is delivered on or after the Service Commencement Dates for all Facility Segments, as a direct result of the Force Majeure Event all or substantially all of the Facility becomes and remains inoperable for a period of 270 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such suspension of operations is not attributable to another concurrent delay;

19.2.1.3 With respect to an Extended Relief Event that is not also a Force Majeure Event, the performance that is delayed for the period set forth in Section 13.1.4.1 is performance of a significant obligation of Developer such that Developer has been unable to realize the material benefits provided by this Agreement due to such delay, and such delay is not attributable to another concurrent delay;

19.2.1.4 Developer could not have mitigated or cured such result through the exercise of reasonably diligent efforts;

19.2.1.5 Such result is continuing at the time of delivery of the written notice;

19.2.1.6 With respect to (a) a Force Majeure Event, an extension of the Term required to provide full recovery under Section 13.1.4 is not available or (b) an Extended Relief Event that is not also a Force Majeure Event, an extension of the Term required to provide full recovery under Section 13.1.4 is not available due solely to limitations on the length of the Term under applicable Law; and

19.2.1.7 The written notice sets forth in reasonable detail the Force Majeure Event or Extended Relief Event, a description of the direct result and its duration, and the notifying Party's intent to terminate this Agreement and the Lease.

19.2.2 Developer Options Upon TxDOT Notice

If TxDOT gives written notice of conditional election to terminate, Developer shall have the option either to accept such notice or to continue this Agreement and the Lease in effect by delivering to TxDOT written notice of Developer's choice not later than 30 days after TxDOT delivers its notice. If Developer does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted TxDOT's election to terminate this Agreement and the Lease. If Developer delivers timely written notice choosing to continue this Agreement and the Lease in effect, then:

19.2.2.1 TxDOT shall have no obligation to compensate Developer for any costs of restoration and repair, for any loss of Toll Revenues or for any other Losses arising out of the Force Majeure Event or Extended Relief Event;

19.2.2.2 If the Force Majeure Event or Extended Relief Event occurred prior to the Service Commencement Date for one or more Facility Segments, there shall be no further extension of the applicable Service Commencement Deadline(s) for the Facility Segments, the applicable Long Stop Date(s) for the Facility Segments or any other schedule milestone on account of the Force Majeure Event or Extended Relief Event, notwithstanding any contrary provision of Article 13, and TxDOT may require delivery and implementation of a logic-based critical path recovery schedule for avoiding further delay in the Design Work and Construction Work;

19.2.2.3 This Agreement and the Lease shall continue in full force and effect and TxDOT's election to terminate shall not take effect; and

19.2.2.4 If either of the effects from the Force Majeure Event or Extended Relief Event described in Section 19.2.1.2 or Section 19.2.1.3 continues for 30 months or more from its inception, Developer may deliver to TxDOT a new written notice of its unconditional election to terminate this Agreement and the Lease, in which case neither Party shall have any further option to continue this Agreement and the Lease in effect.

19.2.3 TxDOT Options Upon Developer Notice

If Developer gives written notice of conditional election to terminate, TxDOT shall have the option either to accept such notice or to continue this Agreement and the Lease in effect by delivering to Developer written notice of TxDOT's choice not later than 30 days after Developer delivers its notice. If TxDOT does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement and the Lease. If TxDOT delivers timely written notice choosing to continue this Agreement and the Lease in effect, then:

19.2.3.1 TxDOT shall be obligated to pay or reimburse Developer an amount equal to:

(a) The incremental increase in Developer's reasonable out-of-pocket costs and expenses to repair and restore any physical damage or destruction to the Facility directly caused by the Force Majeure Event or Extended Relief Event, which shall include, if applicable, any incremental increase in amounts Developer may owe to the applicable Design-Build Contractor under the terms of its Design-Build Contract for (i) costs of repair and restoration and (ii) delay and disruption damages for the period of delay directly caused by the Force Majeure Event or Extended Relief Event after the date Developer delivers its written notice of conditional election to terminate; plus

(b) Developer's reasonable extended overhead and administrative expenses for the period of any delay in achieving the Service Commencement Date for one or more Facility Segments from and after the date Developer delivers its written notice of conditional election to terminate; plus

(c) The lesser of (i) loss of Toll Revenues from and after the date Developer delivers its written notice of conditional election to terminate directly resulting from the Force Majeure Event or Extended Relief Event, determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 13.2, and (ii) an amount equal to (A) regularly scheduled debt service on Facility Debt, other than Subordinate Debt, accrued during the period of delay due to the Force Majeure Event or Extended Relief Event after the date Developer delivers its written notice of conditional election to terminate, plus (B) Developer's unavoidable, reasonable operating and maintenance costs during such period, minus (C) Toll Revenues during such period; minus

(d) The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 16.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under

policies solely with respect to the Facility and the Work, regardless of whether required to be carried pursuant to Section 16.1, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, plus (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 16.1.4.3;

19.2.3.2 Developer's rights to delay and relief from performance obligations under Section 13.1 shall continue to apply to the Force Majeure Event or Extended Relief Event;

19.2.3.3 This Agreement and the Lease shall continue in full force and effect and Developer's election to terminate shall not take effect; and

19.2.3.4 If either of the effects from the Force Majeure Event or Extended Relief Event described in Section 19.2.1.2 or Section 19.2.1.3 continues for 30 months or more from its inception, TxDOT may deliver to Developer a new written notice of its unconditional election to terminate this Agreement and the Lease, in which case neither Party shall have any further option to continue this Agreement and the Lease in effect.

19.2.4 No Waiver

No election by TxDOT under Section 19.2.3 to continue this Agreement and the Lease in effect shall prejudice or waive TxDOT's right to thereafter give a written notice of conditional election to terminate with respect to the same or any other Force Majeure Event.

19.2.5 Concurrent Notices

In the event TxDOT and Developer deliver concurrent written notices of conditional election to terminate, Developer's notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its written notice before actually receiving the written notice from the other Party. Knowledge of the other Party's written notice obtained prior to actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

19.2.6 Early Termination Date and Amount

If either Party accepts the other Party's conditional election to terminate, or if TxDOT delivers written notice of its unconditional election to terminate under Section 19.2.3.4, then this Agreement and the Lease shall be deemed terminated on an Early Termination Date as described in Section G.2 of Exhibit 20; and Developer will be entitled to compensation determined in accordance with Section C of Exhibit 20. Payment will be due and payable as and when provided in Section G.2 of Exhibit 20.

19.3 Termination for Developer Default

19.3.1 Developer Defaults Triggering TxDOT Termination Rights

The following Developer Defaults (each a "Default Termination Event"), and no other Developer Defaults, shall entitle TxDOT, at its sole election, to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to Developer and the Collateral Agent under the Security Documents other than the Subordinated Security Documents. Developer agrees and acknowledges and stipulates that any of the following Developer Defaults would result in material and substantial harm to TxDOT's rights and

interests under this Agreement and therefore constitute a material Developer Default justifying termination if not cured within the applicable cure period, if any:

19.3.1.1 Developer fails to achieve Service Commencement for any Facility Segment by the later of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 or (b) the Long Stop Date for such Facility Segment, as the same may be extended pursuant to this Agreement;

19.3.1.2 There occurs any other Developer Default for which TxDOT issues a Warning Notice under Section 17.2 and such Developer Default is not fully and completely cured within the applicable cure period, if any, set forth in Section 17.2.2 or available to Lenders under Section 20.4 (or, with respect to a remedial plan resulting from Persistent Developer Default, within the applicable cure period available to Developer under Section 17.3.6 after delivery of a Warning Notice); or

19.3.1.3 There occurs any Developer Default under Section 17.1.1.14, 17.1.1.15 or 17.1.1.17.

19.3.2 Compensation to Developer

If TxDOT issues notice of termination of this Agreement and the Lease due to a Default Termination Event, or if Developer terminates this Agreement and the Lease on grounds or in circumstances beyond Developer's termination rights specifically set forth in this Agreement, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section D of Exhibit 20; provided that in no event shall compensation be due for termination on account of or incident to a Developer Default under Section 17.1.1.14, 17.1.1.15 or 17.1.1.17. Payment shall be due and payable as and when provided in Section G.4 of Exhibit 20.

19.3.3 Finality

If TxDOT issues notice of termination of this Agreement and the Lease due to a Default Termination Event, termination shall be effective and final immediately upon delivery of written notice as provided in Section 19.3.1 regardless of whether TxDOT is correct in determining that it has the right to terminate for Developer Default. In the event it is determined that TxDOT lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 19.1.1.5 for the purpose of determining the Termination Compensation due.

19.3.4 Special Provisions Regarding Financing Defaults

19.3.4.1 As an additional Default Termination Event, TxDOT, at its sole election, shall be entitled to terminate this Agreement and the Lease, if there occurs a Developer Default under Section 17.1.1.18 and such Developer Default is not fully and completely cured through completion of Financial Close within the cure period set forth in Section 17.1.2.1, without need for Warning Notice or any other notice and without any additional cure period. Such termination shall be effective and final immediately upon delivery of written notice following such cure period. Upon such termination, TxDOT shall be entitled to draw on the Financial Option Security or forfeiture of the Financial Option Security, as applicable, for the liquidated damages owing to TxDOT under Section 17.4.4.2. For termination rights for failure to achieve Financial Close in the absence of a Developer Default under Section 17.1.1.18, refer to Section 4.1.4.4.

19.3.4.2 As an additional Default Termination Event, TxDOT, at its sole election, shall be entitled to terminate this Agreement and the Lease, if there occurs a Developer Default under Section 17.1.1.19, without need for Warning Notice or any other notice and without any cure period except, if applicable, in the limited circumstance set forth in Section 17.1.2.1. Such termination shall be effective and final immediately upon delivery of written notice following such cure period, if applicable. Upon such termination, TxDOT shall be entitled to draw on the Financial Option Security or forfeiture of the Financial Option Security, as applicable, for the liquidated damages owing to TxDOT under Section 17.4.4.2.

19.4 Termination for TxDOT Default, Suspension of Work, Delayed Notice to Proceed or Abandonment of TxDOT Works

19.4.1 In the event of a material TxDOT Default under Section 17.5.1.1 (failure to pay money due) that remains uncured following notice and expiration of the applicable cure period under Section 17.5.2, Developer may deliver to TxDOT a further written notice setting forth such TxDOT Default and warning TxDOT that Developer may elect to terminate this Agreement and the Lease if TxDOT does not cure such TxDOT Default within 60 days after the delivery of such notice. TxDOT may avoid termination by effecting cure within such 60-day period. Failing such cure, Developer shall have the right to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to TxDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B of Exhibit 20. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.2 In the event TxDOT orders Developer to suspend Work on all or any material portion of the Facility (other than the TxDOT Works) for a reason other than those set forth in Section 17.3.8.1 and such suspension of Work continues for a period of 365 days or more, Developer shall have the right to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to TxDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B of Exhibit 20. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.3 In the event TxDOT for any reason does not issue NTP2 (3C) within 365 days after the anticipated issuance date set forth in Section 7.7, Developer shall have the right to terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to TxDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section E of Exhibit 20. Payment shall be due and payable as and when provided in Section G.5 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.4 In the event of Abandonment by TxDOT of the TxDOT Works, Developer shall have the right to terminate this Agreement and the Lease, effective 30 days after Developer delivers to TxDOT written notice of termination; provided that termination shall not be effective if TxDOT resumes diligent prosecution of the design and construction of the TxDOT Works within such 30-day period. In the event of such termination, Developer will be entitled to

compensation determined in accordance with Section B of Exhibit 20. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

19.4.5 If Developer issues notice of termination of this Agreement and the Lease due to a material TxDOT Default under Section 17.5.1.1, termination shall be effective and final immediately upon delivery as provided in Section 19.4.1 regardless of whether Developer is correct in determining that it has the right to terminate for such TxDOT Default. In the event it is determined that Developer lacked such right, then such termination shall be treated as a termination due to material Developer Default and Section 19.3.2 shall govern the measure of the Termination Compensation.

19.5 Termination Procedures and Duties

Upon expiration of the Term or any earlier termination of this Agreement and the Lease for any reason, including due to TxDOT Default but excepting termination pursuant to Section 19.1.2 or 19.14.1, the provisions of this Section 19.5 shall apply. Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or TxDOT on account of termination.

19.5.1 In any case where notice of termination precedes the effective Early Termination Date:

19.5.1.1 Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the FA Documents, and without curtailment of services, quality and performance;

19.5.1.2 Not later than 30 days after notice of termination is delivered, and annually thereafter within 30 days after the beginning of each Fiscal Year until the effective Early Termination Date (or rescission or expiration of the notice of termination), Developer shall deliver to an Intellectual Property Escrow for access and review by TxDOT an annual budget for the Facility for the current Fiscal Year in at least as much detail as any budget required by Lenders and Good Industry Practice, together with its annual budgets for the immediately preceding three Fiscal Years and detailed itemization of all costs and expenses for the immediately preceding three Fiscal Years organized by the line items in the budgets;

19.5.1.3 Each current budget shall provide for operating and maintenance expenditures at least sufficient to continue services and operations at the levels experienced in years prior to notice of termination, taking into account inflationary effects, and in any case consistent with continuing performance to the requirements of the FA Documents.

19.5.1.4 At TxDOT's option, it may increase and direct the Independent Engineer to increase the level of its and the Independent Engineer's monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Facility and Developer's compliance with the obligations under this Agreement, to such level as TxDOT reasonably sees fit to protect against curtailment of services, quality and performance. Developer and TxDOT shall share equally the extra costs of the Independent Engineer.

19.5.2 Within three days after receipt of a notice of termination, Developer shall meet and confer with TxDOT for the purpose of developing an interim transition plan for the orderly

transition of Work, demobilization and transfer of the Facility and Facility Right of Way control to TxDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date Developer receives the notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to TxDOT in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 19.5, all of which procedures Developer shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan or:

19.5.3 From and after the Termination Date, even though Developer may be continuing services temporarily pursuant to a transition plan, Developer shall cease to own or have rights to Toll Revenues, except to the extent of any continuing pledge and security interest pursuant to Section 19.10 or the Facility Trust and Security Instruments. On the Termination Date, or as soon thereafter as is possible, Developer shall relinquish and surrender full control and possession of the Facility and Facility Right of Way to TxDOT or TxDOT's Authorized Representative, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements.

19.5.4 On the later of the Termination Date or the date Developer relinquishes full control and possession, TxDOT shall assume responsibility, at its expense, for the Facility and the Facility Right of Way, subject to any rights to damages against Developer where the termination is due to a Default Termination Event.

19.5.5 If as of the Termination Date Developer has not completed construction of all or part of the Facility and Utility Adjustments that are part of the Construction Work, TxDOT may elect, by written notice to Developer and each applicable Design-Build Contractor delivered within 90 days after the Termination Date, to continue in effect its Design-Build Contract or to require its termination. If TxDOT does not deliver written notice of election within such time period, TxDOT shall be deemed to elect to require termination of each Design-Build Contract. If TxDOT elects to continue a Design-Build Contract in effect, then Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Design-Build Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT elects (or is deemed to elect) to require termination of a Design-Build Contract, then Developer shall:

19.5.5.1 Unless TxDOT has granted New Agreements to a Lender or its Substituted Entity, take such steps as are necessary to terminate the Design-Build Contract, including notifying the Design-Build Contractor that its Design-Build Contract is being terminated and that the Design-Build Contractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by TxDOT;

19.5.5.2 Immediately safely demobilize and secure construction, staging, lay down and storage areas for the Facility and Utility Adjustments included in the Construction Work in a manner satisfactory to TxDOT, and remove all debris and waste materials except as otherwise approved by TxDOT in writing;

19.5.5.3 Take such other actions as are necessary or appropriate to mitigate further cost;

19.5.5.4 Subject to the prior written approval of TxDOT, settle all outstanding liabilities and all claims arising out of the Design-Build Contract;

19.5.5.5 Cause each applicable Design-Build Contractor to execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all such Design-Build Contractor's right, title and interest in and to (a) all Utility Agreements, assignable agreements with railroads and other third party agreements and permits, except subcontracts for performance of the Design Work and Construction Work, provided TxDOT assumes in writing all of such Design-Build Contractor's obligations thereunder that arise after the Termination Date, and (b) all assignable warranties, claims and causes of action held by such Design-Build Contractor against subcontractors and other third parties in connection with the Facility or the Work, to the extent the Facility or the Work is adversely affected by any subcontractor or other third party breach of warranty, contract or other legal obligation; and

19.5.5.6 Carry out such other directions as TxDOT may give for termination of Design Work and Construction Work.

19.5.6 If as of the Termination Date Developer has entered into any other contract for the design, construction, permitting, installation and equipping of the Facility or for Utility Adjustments, excluding the Independent Engineer Joint Work Authorization, TxDOT shall elect, by written notice to Developer, to continue in effect such contract or to require its termination. If TxDOT elects to continue the contract in effect, then Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If TxDOT elects to require termination of the contract, then Developer shall take actions comparable to those set forth in Section 19.5.5 with respect to the contract.

19.5.7 If as of the Termination Date Developer has entered into any O&M Contract, TxDOT shall elect, by written notice to Developer, to continue it in effect or require its termination; provided that if a Lender is entitled to New Agreements following termination, TxDOT shall not elect to terminate any such Contract until the Lender's right to New Agreements expires without exercise. If TxDOT elects to continue any such Contract in effect, then on or about the Termination Date (or promptly after any later election to terminate) Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date.

19.5.8 On or about the Termination Date Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the Independent Engineer Joint Work Authorization, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the date of assignment.

19.5.9 Within 30 days after notice of termination is delivered, Developer shall provide TxDOT with true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by Developer or any person or entity on behalf of or for the account of Developer) for use in or respecting the Work or the Facility (other than for TxDOT's design and construction of the TxDOT Works), or on order or

previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Facility (other than for TxDOT's design and construction of the TxDOT Works). In addition, on or about the Termination Date, Developer shall transfer title and deliver to TxDOT or TxDOT's Authorized Representative, through bills of sale or other documents of title, as directed by TxDOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided TxDOT assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the Termination Date.

19.5.10 Developer shall take all action that may be necessary, or that TxDOT may direct, for the protection and preservation of the Facility, the Work and such materials, goods, machinery, equipment, parts, supplies and other property.

19.5.11 At TxDOT's request, Developer shall assist TxDOT, for a reasonable period, with its hiring and training of personnel for operation of the Electronic Toll Collection System and with training of personnel in the use and operation of any other software or computer programs Developer uses in connection with the Facility. Such assistance, if requested, shall include training and instruction on system features and operations, explanation and instruction regarding operating plans, rules, manuals and procedures, on-the-job training and other reasonable measures to enable the personnel being trained to properly and efficiently operate such system.

19.5.12 On the Termination Date, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Facility and Facility Right of Way, including that set forth in the recorded Memorandum of Lease, as amended by each recorded Amendment to Memorandum of Lease and (b) record a termination of the Memorandum of Lease.

19.5.13 If applicable, on the Termination Date, Developer shall assign, transfer and set over to TxDOT the Handback Requirements Reserve and funds therein in accordance with Section 8.11.4.1.

19.5.14 On or about the Termination Date, Developer shall deliver to TxDOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to TxDOT, acting reasonably, assigning and transferring to TxDOT all of Developer's and its Contractors' right, title and interest in and to the following:

19.5.14.1 All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Facility or the Utility Adjustments;

19.5.14.2 All samples, borings, boring logs, geotechnical data and similar data and information relating to the Facility or Facility Right of Way;

19.5.14.3 All books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Facility or the Facility Right of Way;

19.5.14.4 All data and information relating to the use of the Facility by the traveling public or Toll Revenues, including (a) all data compiled or maintained by the Electronic Toll Collection System, whether then maintained on the system or in archives or

storage, (b) all customer account information and (c) all studies, reports, projections, estimates and other market research or analysis relating to use of the Facility by the traveling public provided that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5; and

19.5.14.5 All other work product and Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the Facility or the Facility Right of Way, provided that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5.

19.5.15 Effective as of the Termination Date, Developer shall assign and transfer to TxDOT all of Developer's right, title and interest in and to customer accounts relating to the Facility and funds credited thereto; provided that:

19.5.15.1 As soon as reasonably practicable after the Termination Date, the Parties shall adjust and prorate the funds in such accounts, and any other funds collected from Facility customers, as follows:

(a) There shall be credited to Developer any debits to an account for customer use of the Facility prior to the Termination Date, to the extent there were sufficient funds in the account as of the Termination Date to cover the debited amount;

(b) There shall be credited to Developer any sums collected by or on behalf of TxDOT after the Termination Date from a customer respecting a toll violation that occurred prior to the Termination Date, but only net of the application of any sums collected to tolls owing for use of the Facility from and after the Termination Date; and

(c) Any debits to an account for customer use of the Facility from and after the Termination Date, if collected by Developer, shall be remitted to TxDOT.

19.5.15.2 TxDOT, by written notice to Developer, may elect not to take over customer accounts of Developer (if any) if TxDOT intends to cease tolls on the Facility following expiration or earlier termination of this Agreement. In such case, Developer shall promptly inform its account customers of the cessation of tolls and of the customer's choice either to cancel the account and receive refund of all unexpended funds or to transfer the account to the custody and control of another operator of any toll Facility that has account interoperability with the Facility. The notice shall identify each such other Facility and provide contact information for the operators thereof. The notice shall give customers a reasonable period to respond, and shall state that the account will be closed and funds returned unless the customer timely responds with a request to transfer the account. Developer shall thereafter conclude disposition of accounts and account funds in accordance with customer directions.

19.5.16 Within 90 days after the Termination Date, the Parties shall adjust and prorate costs of operation and maintenance of the Facility, including utility costs and deposits, as of the Termination Date. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking

readjustment delivers written request therefor to the other Party not later than 180 days following the Termination Date.

19.5.17 On or about the Termination Date, Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, all of Developer's right, title and interest in and to any Intellectual Property Escrows or similar arrangements for the protection of Intellectual Property, Source Code or Source Code Documentation of others used for or relating to the Facility or the Work.

19.5.18 If Developer holds any lease or rental agreement for any customer service center or customer service outlet serving customers of the Facility, at TxDOT's request, Developer shall execute and deliver to TxDOT on or about the Termination Date a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of such lease or rental agreement and Developer's right, title and interest thereunder, and TxDOT shall assume Developer's obligations thereunder arising from and after the date of assignment. Developer shall assist and cooperate with TxDOT in connection with its investigation and decision regarding any such lease or rental agreement, including providing TxDOT access to the premises for inspection and seeking any consent to assignment required by the landlord.

19.5.19 On or about the Termination Date, Developer shall execute and deliver to TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to all warranties, claims and causes of action held by Developer against third parties in connection with the Facility or the Work, including claims under casualty and business interruption insurance, but excluding any such Insurance Policy claims to the extent made prior to the Valuation Date and taken into account as a reduction in the appraisal and determination of Fair Market Value.

19.5.20 Developer shall otherwise assist TxDOT in such manner as TxDOT may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Facility and its management to TxDOT, and shall, if appropriate and if requested by TxDOT, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of the Facility.

19.6 No Separate Terminations of Agreement and Lease

If for any reason this Agreement is terminated before the Lease is granted, then all right to obtain the Lease shall concurrently cease and terminate. TxDOT and Developer further agree and expressly intend that after the Lease is granted neither this Agreement nor the Lease shall continue in full force and effect without the other. Accordingly, (a) any termination of this Agreement according to its terms shall also automatically constitute a termination of the Lease, even if the notice of termination fails to declare a termination of the Lease, and (b) any termination of the Lease shall also automatically constitute a termination of this Agreement, even if the notice of termination fails to declare a termination of this Agreement. Nothing in this Section 19.6 shall preclude a termination of this Agreement solely in respect of the Segment 3B Facility Segment as provided in Section 19.14.1.

19.7 Effect of Termination

19.7.1 Cessation of Developer's Interest and Liens and Encumbrances

Except as provided in Section 19.10 and the Facility Trust and Security Instruments, and except in the case of a termination of this Agreement solely in respect of the Segment 3B Facility Segment as provided in Section 19.14.1, termination of this Agreement and the Lease under any provision of this Article 19 shall automatically cause, as of the Termination Date, the cessation of any and all property interest of Developer, real and personal, tangible and intangible, in or with respect to the Facility, the Facility Right of Way, the Toll Revenues and the Handback Requirements Reserve, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including but not limited to the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Funding Agreements and Security Documents. In order to confirm the foregoing, at TxDOT's request, Developer shall promptly obtain and deliver to TxDOT recordable reconveyances, releases and discharges of all Security Documents, executed by the Lenders, but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

19.7.2 Facility Trust Agreement

Except as provided otherwise in Section 19.10 and the Facility Trust and Security Instruments, the Facility Trust Fund and Developer's security interests in the Revenue Payment Amount, the Developer Claims Account and the Post-Termination Revenue Account, shall cease and terminate at the end of the Term, at which time the trustee under the Facility Trust Agreement shall distribute to the Party entitled thereto all funds remaining in each account.

19.7.3 Contracts and Agreements

Regardless of TxDOT's prior actual or constructive knowledge thereof, and except for the Facility Trust Agreement and any joinder agreement entered into pursuant to Section 19.10.4 should they survive the Termination Date, no contract or agreement to which Developer is a party (unless TxDOT is also a party thereto) as of the Termination Date shall bind TxDOT, unless TxDOT elects to assume such contract or agreement in writing. Except in the case of TxDOT's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Facility following Developer's relinquishment to TxDOT of possession and control of the Facility, or to any claim, legal or equitable, against TxDOT.

19.8 Liability After Termination; Final Release

19.8.1 No termination of this Agreement or the Lease shall excuse either Party from any liability arising out of any default as provided in this Agreement or the Lease that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement shall automatically extinguish any Claim of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Compensation Events that occurred prior to termination; provided, that the foregoing shall not limit, diminish or eliminate any right of Developer to payment of Compensation Amounts solely related to the Segment 3A Facility Segment and the Segment 3C Facility Segment in the case of a partial termination as contemplated in Section 19.14.1.

19.8.2 Subject to Sections 19.5.15 and 19.5.16, if this Agreement is terminated under Section 19.1, 19.2, 19.3.1, 19.4, 19.12 or 19.13, then TxDOT's payment to Developer of the amounts required thereunder (if any) shall constitute full and final satisfaction of, and upon payment TxDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against TxDOT arising out of or relating to this Agreement or the Lease or termination thereof, or the Facility, except for specific Claims and Disputes that are asserted by Developer in accordance with Section 17.8.3.1 not later than 30 days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to TxDOT all such releases and discharges as TxDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

19.9 Exclusive Termination Rights

This Article 19, together with the express provisions on termination set forth in Sections 4.1.4, 17.3.1, 17.6.1, Article 20, Exhibit 20 and in the Lease, contain the entire and exclusive provisions and rights of TxDOT and Developer regarding termination of this Agreement and the Lease, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Law. TxDOT irrevocably waives and relinquishes any right it may have under applicable Law (including any Change in Law) to take or expropriate any shares, partnership interests, membership interests or other equity interests in Developer.

19.10 Covenant to Continue Tolling Facility

In the event there exists as of the expiration of the Term or an Early Termination Date any outstanding unpaid amount owing from TxDOT to Developer, or any outstanding, unsatisfied Claim for sums owing from TxDOT to Developer, including any unpaid Termination Compensation, the terms and conditions of this Section 19.10 shall apply, and shall survive termination; provided that this Section 19.10 shall not apply to the Segment 3B Facility Segment if a partial termination previously occurred under Section 19.14.1.

19.10.1 TxDOT shall continue to operate and maintain the Facility, or cause it to be operated and maintained, as a tolled facility to the same or substantially equivalent standards as required of Developer under this Agreement.

19.10.2 TxDOT shall set, adjust, impose and collect tolls and charges in accordance with Exhibit 4.

19.10.3 TxDOT shall cause all tolls and Video Transaction Toll Premiums (but not Incidental Charges) to be transferred into the Post-Termination Revenue Account under the Facility Trust Agreement; and Developer shall have and retain a continuing perfected lien on, pledge of and security interest in the Post-Termination Revenue Account and the funds therein pursuant to the Facility Trust and Security Instruments, until all amounts due are paid in full.

19.10.4 TxDOT shall put in place and maintain in effect an agreement between TxDOT and a financial institution to act as custodian, for TxDOT and designated beneficiaries, of customer accounts for TxDOT-issued Transponders and of toll revenues received from toll transactions TxDOT processes for collection and enforcement, including Transactions from the

Facility, and to name Developer as a designated beneficiary with respect to lockbox and custodial accounts established thereunder for holding and disposition of toll revenues from the Facility. TxDOT and Developer acknowledge that as of the Effective Date TxDOT has contracted for such custodial arrangements pursuant to a certain Master Lockbox and Custodial Agreement with The Bank of New York Trust Company, N.A., as custodian, dated November 9, 2007 (the “existing custodial agreement”). If the existing custodial agreement is in effect when TxDOT’s obligation under this Section 19.10.4 arises, TxDOT, Developer and the custodian shall execute a joinder agreement substantially in the form of Exhibit 24. If the existing custodial agreement is not in effect when TxDOT’s obligation under this Section 19.10.4 arises, TxDOT shall enter into an agreement with a custodian on substantially similar terms to the existing custodial agreement, and TxDOT, Developer and the custodian shall enter into a joinder agreement on substantially similar terms to Exhibit 24.

19.10.5 TxDOT shall maintain account holder funds separate and apart from State funds and shall cause all debits to the accounts of transponder holders for Transponder Transactions to be transferred via the custodial accounts to the Facility Trust Fund for deposit into the Post-Termination Revenue Account; provided that if TxDOT’s customary non-Discriminatory rules and procedures for its toll processing or clearinghouse functions include deducting its transaction fee for such functions, then TxDOT may reduce the amount of each such transfer to the Facility Trust Fund by the transaction fee amount.

19.10.6 TxDOT’s billing statements to Video Transaction Users shall instruct the User to make payments in the name of and to the address of either the trustee of the Facility Trust Fund or the custodian under the custodial agreement described in Section 19.10.4.

19.10.7 If for any reason TxDOT receives any payment for a Transponder Transaction or Video Transaction, all Toll Revenues that are part of such payment shall be deemed received by TxDOT merely as a bailee or agent and shall not constitute funds of TxDOT or the State; and TxDOT shall forthwith remit such payments to the trustee under the Facility Trust Agreement for deposit into the Post-Termination Revenue Account.

19.10.8 Pursuant to the terms of the Facility Trust Agreement, TxDOT shall have the right to (a) draw from the revenues deposited in the Post-Termination Revenue Account under the Facility Trust Agreement to pay as and when incurred TxDOT’s reasonable and documented operating and maintenance costs and expenses respecting the Facility, (b) fund subaccounts of the Facility Trust Fund for reasonable reserves for costs of reconstruction, rehabilitation, renewal and replacement of the Facility; and (c) draw from the revenues deposited into such subaccounts TxDOT’s reasonable documented costs of reconstruction, rehabilitation, renewal and replacement of the Facility.

19.10.9 Pursuant to the terms of the Facility Trust Agreement, for undisputed amounts due Developer, Developer shall be entitled to monthly distributions of all revenues held under the Facility Trust Agreement net of TxDOT’s permitted draws for such costs and expenses and net of such permitted reasonable reserves, until the undisputed amounts are paid in full.

19.10.10 For disputed amounts due Developer, such net revenues shall continue to be held in trust under the Facility Trust Agreement until final, non-appealable decisions are rendered on all disputed amounts. TxDOT may apply, through the Dispute Resolution Procedures, for limitations on the amount so held in trust to the extent the Disputes Board or other applicable decision making body decides that any disputed portion of the Claim has no

reasonable likelihood of award. The amounts of any final, non-appealable awards shall be funded in the same manner as undisputed amounts under Section 19.10.9 until paid in full.

19.10.11 At such time as all amounts due Developer are paid in full, or at any earlier date that the funds held in trust, net of such costs, expenses and reserves, are sufficient to pay disputed and undisputed amounts that are outstanding, (a) TxDOT's obligation to operate the Facility as a tolled facility shall cease, (b) pursuant to the terms of the Facility Trust and Security Instruments TxDOT's right to make withdrawals from the Post-Termination Revenue Account shall be restricted (subject to Section 19.10.10) to preserve the disputed or undisputed amounts that are outstanding, (c) tolls or additional charges to Users thereafter collected by TxDOT shall not be subject to the provisions of this Section 19.10 nor subject to any pledge, lien, security interest or encumbrance in favor of Developer or any Lender, and (d) TxDOT and Developer, promptly upon the other Party's request, shall execute such certificates, releases and other documents, including written confirmation of termination of any joinder agreement entered into pursuant to Section 19.10.4, as the other Party reasonably requests to confirm the foregoing.

19.10.12 At such time as all amounts payable to Developer are paid in full to Developer, the balance held under the Facility Trust Agreement, if any, shall be immediately distributed to TxDOT and the Facility Trust and Security Instruments, Facility Trust Fund and Developer's security interests in the Post-Termination Revenue Account, together with any joinder agreement entered into pursuant to Section 19.10.4, shall cease and terminate.

19.11 Access to Information

Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with TxDOT all data, documents and information pertaining thereto, on an Open Book Basis.

19.12 Termination by Court Ruling

19.12.1 Except with respect to a final court order or Disputes Board Decision described in Section 19.1.1.3, and except in the circumstances described in Section E.5 or E.6 of Exhibit 20, Termination by Court Ruling means, and becomes effective upon, (a) issuance of a final order by a court of competent jurisdiction to the effect that this Agreement and/or the Lease are void and/or unenforceable or impossible to perform in their entirety, (b) issuance of a final order by a court of competent jurisdiction upholding the binding effect on Developer or TxDOT of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or TxDOT under the FA Documents or impossibility of exercising a fundamental right of Developer or TxDOT under the FA Documents, (c) occurrence of the circumstances described in Section 24.14.3 or 24.14.4, or (d) issuance of a final order by a court of competent jurisdiction in a case brought by an unrelated third party to the effect that the inclusion in this Agreement of the Segment 3C Facility Segment or the Facility Extension portion of the Segment 3C Facility Segment pursuant to Section 14.1.1.3 is void and/or unenforceable. The final court order shall be treated as the notice of termination.

19.12.2 Once Termination by Court Ruling becomes effective, TxDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10.

19.12.3 Notwithstanding Section 19.12.2, if a Termination by Court Ruling occurs, Developer shall be entitled to compensation to the extent, and only to the extent, provided in

Section E of Exhibit 20. Payment shall be due and payable as and when provided in Section G.5 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.12.4 In the event of a Termination by Court Ruling as set forth in Section 19.12.1(d):

19.12.4.1 Termination shall be limited to either the Facility Extension portion of the Segment 3C Facility Segment or the entire Segment 3C Facility Segment, as determined by the final judgment of the court, and this Agreement shall continue in full force and effect as to the balance of the Facility;

19.12.4.2 Developer shall (i) immediately cease to perform any Work in respect of the Facility Extension portion of the Segment 3C Facility Segment or the entire Segment 3C Facility Segment, as applicable, and (ii) take all action reasonably requested by TxDOT for the protection and preservation of such Work and related materials, goods, machinery, equipment, parts, supplies and other property, at no cost to Developer;

19.12.4.3 As of the effective date of such termination, all references herein and in the other FA Documents to the Segment 3C Facility Segment (a) shall mean and be limited to the IH 820/I-35W managed lanes direct connectors described in Section 1.2.3 of the Technical Provisions, if termination is limited to the Facility Extension portion of the Segment 3C Facility Segment, or (b) shall have no further force or effect, if termination applies to the entire Segment 3C Facility Segment;

19.12.4.4 Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section E.2 of Exhibit 20;

19.12.4.5 The provisions of Sections 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10 shall apply, *mutatis mutandis*, adjusted as appropriate to the context of such partial termination of this Agreement; and

19.12.4.6 Within three Business Days after the partial termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to, as applicable, either (a) the Facility Extension portion of the Segment 3C Facility Segment and related Facility Right of Way or (b) the entire Segment 3C Facility Segment and related Facility Right of Way.

19.13 Termination for Lack of NEPA Finality

19.13.1 In the event the NEPA Finality Date has not occurred by the date that is five years after the Effective Date or, as to the NEPA Approval for the Westport Parkway managed lane braided ramps, SH 170 direct connectors and reconfigured IH 820/I-35W managed lane direct connectors in the Segment 3C Facility Segment definition in Exhibit 1 to this Agreement, by the date that is five years after the Amendment Effective Date, or any extension thereof mutually agreed to in writing by the Parties, each Party, at its sole election, may thereafter terminate this Agreement and the Lease, effective immediately upon delivery of written notice of termination to the other Party and the Collateral Agent under the Security Documents other than the Subordinated Security Documents. However, if the NEPA Finality

Date occurs before written notice of termination is delivered, then no such notice shall be effective and neither Party shall have a right to terminate under this Section 19.13.

19.13.2 Once termination due to lack of occurrence of the NEPA Finality Date becomes effective, TxDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, 19.9 and 19.10.

19.13.3 Notwithstanding Section 19.13.2, if either Party elects to terminate due to lack of occurrence of the NEPA Finality Date, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section E of Exhibit 20. Payment shall be due and payable as and when provided in Section G.5 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.14 Termination for TxDOT Failure to Achieve TxDOT Substantial Completion

19.14.1 In the event that TxDOT fails to achieve TxDOT Substantial Completion by the Original Long Stop Date for TxDOT Substantial Completion, subject to Section 19.14.3, Developer shall have the right to terminate this Agreement solely in respect of the Segment 3B Facility Segment. Termination shall be effective 45 days after delivery of written notice to TxDOT (the "Partial Termination Notice"), except that if TxDOT achieves TxDOT Substantial Completion as confirmed by the Independent Engineer within such 45-day period, then Developer shall have no right to partial termination and the Partial Termination Notice shall be deemed rescinded. Such notice will set forth Developer's estimate of the amount of compensation to which Developer would be entitled if TxDOT were to elect to exercise its right to terminate this Agreement in respect of all Facility Segments under Section 19.14.3. In the event of such termination, Developer shall be entitled to the Partial Termination Amount plus any costs Developer incurs (or any Affiliate thereof incurs provided the Affiliate incurs such costs on the same or more attractive terms than available to Developer) in connection with the establishment and maintenance of (but not draws or replenishments that are covered in Section 13.2.6.1(b)(i)) any reserve account, letter of credit or other credit support or collateral that is established as described in Section 13.2.6.1(b)(i) and any such costs related to the funding of any amounts contemplated under such Section 13.2.6.1(b)(i) during the period between the Original Long Stop Date for TxDOT Substantial Completion and the date of payment, including those accrued during such period that become due and payable not later than six months after the end of such period, provided that such costs are at prevailing market prices, together with any interest thereon pursuant to Section B.7 of Exhibit 20, if applicable. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any such Partial Termination Notice provided by Developer shall be provided no later than 60 days after the Original Long Stop Date for TxDOT Substantial Completion. If such Partial Termination Notice is not so delivered within such time period, such right to terminate shall automatically expire.

19.14.2 In the event of a partial termination of this Agreement solely in respect of the Segment 3B Facility Segment in accordance with Section 19.14.1:

19.14.2.1 Developer shall (a) cease to perform any Work in respect of Segment 3B Facility Segment, and (b) take all action reasonably requested by TxDOT for the protection and preservation of such Work and related materials, goods, machinery, equipment, parts, supplies and other property, at no cost to Developer;

19.14.2.2 As of the effective date of such termination, all references herein and in the other FA Documents to the Segment 3B Facility Segment shall have no further effect; and

19.14.2.3 Within three Business Days after the partial termination occurs, Developer shall execute, acknowledge and deliver to TxDOT a quitclaim deed, in form and substance acceptable to TxDOT, acting reasonably, quitclaiming all of Developer's right, title, interest and estate in and to the Segment 3B Facility Segment and related Facility Right of Way.

19.14.3 TxDOT shall have the right to reject such partial termination of this Agreement in respect of the Segment 3B Facility Segment no later than 45 days after delivery by Developer of the Partial Termination Notice and to terminate this Agreement in its entirety (i.e. respecting the entire Facility and Facility Right of Way). Such termination of this Agreement in its entirety shall be effective upon delivery of written notice to Developer within such 45-day period. In the event of such termination, Developer shall be entitled to the compensation determined in accordance with Section B.1 of Exhibit 20. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 20. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures, subject to Sections 17.8.1.1(b) and 17.8.1.5.

ARTICLE 20. LENDERS' RIGHTS

20.1 Conditions and Limitations Respecting Lenders' Rights

20.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 20, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 4.3.

20.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 20, unless the Refinancing is in compliance with Section 4.4.

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

20.1.4 No Lender shall be entitled to the rights, benefits and protections of this Article 20 unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents. For avoidance of doubt, no Lender holding Facility Debt secured by a Subordinated Security Document shall have any rights, benefits or protections under this Article 20.

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

20.1.6 All rights acquired by Lenders under any Funding Agreement or Security Document shall be subject to the provisions of this Agreement and the Lease and to the rights of TxDOT hereunder and thereunder.

20.1.7 The following provisions of this Article 20 shall apply only to Security Documents, and the Lenders thereunder, that comply with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4. None of the following provisions of this Article 20 shall be construed inconsistently with the provisions of this Section 20.1. The provisions of this Article 20 that are binding on TxDOT shall inure only to the benefit of such Lenders, and create no rights in favor of Developer.

20.2 Effect of Amendments

While any Security Document is in effect, no agreement between TxDOT and Developer for the modification or amendment of this Agreement or the Lease shall be binding without the Collateral Agent's consent, except (a) to the extent expressly provided otherwise in this Agreement (e.g. Sections 14.1, 14.2, 14.3) or (b) where the terms of the Funding Agreements and Security Documents do not require Collateral Agent consent to the modification or amendment.

20.3 Notices to Collateral Agent

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

20.4 Opportunity to Cure and Step-In

As long as any Security Document shall remain unsatisfied of record, the following provisions shall apply with respect to any such Security Document and the related Lender or Lenders and Funding Agreements. None of the following provisions shall apply, however, with respect to a Developer Default under Section 17.1.1.18 or termination of this Agreement and the Lease as a result thereof.

20.4.1 Should any Developer Default occur which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling TxDOT to terminate this Agreement, TxDOT shall not terminate this Agreement or the Lease until it first delivers to the Collateral Agent a copy of the Warning Notice given to

Developer and provides the Collateral Agent a reasonable opportunity to cure such Developer Default, as provided below, provided that no opportunity to cure beyond that afforded Developer shall be required for failure of Developer to timely deliver or perform any remedial plan required under Section 17.3.6, and neither a Warning Notice nor opportunity to cure shall be required for a Developer Default under Section 17.1.1.14, 17.1.1.15 or 17.1.1.17. Commencing on the date the applicable cure period available to Developer expires, the Lender shall have the right (but not the obligation) to remedy such Developer Default or cause the same to be remedied by its Substituted Entity; and from and after such date TxDOT shall accept such performance by or at the instigation of the Lender or Substituted Entity as if Developer had done the same. TxDOT shall have no obligation to accept any Lender's tender of a cure prior to such date.

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

20.4.3 If Developer fails to achieve Service Commencement for any Facility Segment by the Service Commencement Deadline, as the same may be extended pursuant to this Agreement, then the Collateral Agent shall have until the later of (a) the end of the 90-day Warning Notice period set forth in Section 17.2.1.2 and (b) the Long Stop Date for such Facility Segment, as the same may be extended pursuant to this Agreement (including extension pursuant to Section 20.4.9), to achieve or cause Developer to achieve Service Commencement for the Facility Segment. If Service Commencement for any Facility Segment is not achieved by such date, then it shall constitute a material Developer Default and TxDOT may proceed to terminate this Agreement and the Lease without further notice to, or opportunity to cure by, the Lender.

20.4.4 As to such Developer Default, other than (a) the failure to pay a monetary obligation, (b) the failure to achieve Service Commencement for a Facility Segment by the deadline set forth in Section 20.4.3 and (c) Developer Defaults governed by Section 20.4.7, the Collateral Agent shall have a cure period ending 30 days after the later of (i) the date Developer's cure period expires and (ii) the date of delivery of a copy of the Warning Notice to the Collateral Agent. If no cure period is available to Developer, then the Collateral Agent's cure period shall be 60 days, commencing with the date of delivery of a copy of the Warning Notice to the Collateral Agent. However, such period to cure shall be extended if the default is capable of being corrected without having possession of the Facility (e.g. cure of Developer Defaults under Sections 17.1.1.9 and 17.1.1.16) but cannot reasonably be corrected within such cure period and the Collateral Agent or the Substituted Entity begins meaningful steps to correct such matter within the later of (A) 30 days after the date Developer's cure period expires and (B) 60 days after TxDOT delivers a copy of the Warning Notice and thereafter prosecutes the cure to completion with good faith, diligence and continuity, in any event not to exceed a cure period ending on the later of (I) the date Developer's cure period expires and (II) the date of delivery of a copy of the Warning Notice to the Collateral Agent, unless extended pursuant to Section 20.4.10.

20.4.5 The Collateral Agent shall have the right to postpone and extend the time to cure any Developer Default governed by Section 20.4.4 capable of being cured only through possession of the Facility if the Collateral Agent shall:

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

20.4.5.2 Continue to pay or cause to be paid when due all fees, rent and other amounts due from Developer under this Agreement or the Lease;

20.4.5.3 Not later than 30 days after receiving a copy of the Warning Notice, initiate and thereafter pursue with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Facility; and

20.4.5.4 Promptly execute all documents reasonably requested by TxDOT affecting the transactions contemplated by this Section and this Agreement.

20.4.6 The Collateral Agent shall exercise the right provided in Section 20.4.5 by giving TxDOT written notice of the exercise of the same 30 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice. If the Collateral Agent or its Substituted Entity shall have succeeded to the Developer's Interest and obtained possession diligently and with continuity, and in any event within 210 days after TxDOT delivers to the Collateral Agent a copy of the Warning Notice, shall have delivered to TxDOT within 15 days after obtaining possession an assumption in writing of all duties, obligations and liabilities of Developer under this Agreement and the Lease, and shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Developer Default shall be removed and this Agreement and the Lease shall not be terminated. In connection with any Developer Default or any condition imposed upon Developer to exercise any rights contained in this Agreement which cannot be cured or performed until the Collateral Agent or its Substituted Entity obtains possession, the Collateral Agent or its Substituted Entity shall have a time after it obtains possession as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 20.4.10.

20.4.7 If the Developer Default is peculiar to Developer and is not curable by the Collateral Agent regardless of whether it obtains possession or control of the Facility, such as a Developer Default under Section 17.1.1.10, 17.1.1.14, 17.1.1.15 or 17.1.1.17, or if the Developer Default is a failure to timely deliver and perform a remedial plan required under Section 17.3.6, then TxDOT may terminate this Agreement and the Lease without providing a cure period to any Lender.

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

20.4.8.1 In order to exercise such option, the Collateral Agent must deliver to TxDOT, within 60 days after TxDOT delivers its written notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent (or its Substituted Entity) will enter into the New Agreements and pay all the amounts described in Section 20.4.8.4, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent (or its Substituted Entity). If any of the foregoing is not delivered within such 60-day period, the option in favor of the Collateral Agent (and all related Lenders) shall automatically expire;

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

20.4.8.3 The New Agreements shall be effective as of the date of termination of this Agreement and the Lease and shall be for the remainder of the term of this Agreement and the Lease, at the rent and upon the terms, covenants, and conditions contained in this Agreement and the Lease; and

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

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

(b) Otherwise fully remedy any existing Developer Defaults under this Agreement or the Lease (provided, however, that with respect to any Developer Default which cannot be cured until the Collateral Agent or its Substituted Entity obtains possession, it shall have such time, after it obtains possession, as is necessary with the exercise of good faith, diligence and continuity to cure such default, in any event not to exceed 180 days after the date it obtains possession, unless extended pursuant to Section 20.4.10);

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

(d) Deliver to TxDOT new Payment and Performance Bonds and new letters of credit and guarantees to the extent required under this Agreement.

20.4.8.5 Upon execution of the New Agreements and payment of all sums due TxDOT, TxDOT shall (a) assign and deliver to the Collateral Agent or its Substituted Entity, without warranty or representation, all the property, contracts, documents and

information that Developer may have assigned and delivered to TxDOT upon termination of this Agreement pursuant to Section 19.5, and (b) if applicable, transfer into a new Handback Requirements Reserve established by the Collateral Agent or Substituted Entity in accordance with this Agreement, all funds TxDOT received from the Handback Requirements Reserve pursuant to Section 8.11.4.1 (or from draw on a Handback Requirements Letter of Credit) less so much thereof that TxDOT spent or is entitled to as reimbursement for costs of Renewal Work TxDOT performed prior to the effectiveness of the New Agreements.

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

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

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

(b) If TxDOT does not receive the Collateral Agent's written designation within ten days after delivering written request, then TxDOT may conclusively rely, without further inquiry and without liability to any Lender, on the seniority indicated by a then-current title report that TxDOT obtains from one of the four largest title insurance companies doing business in Texas (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other leasehold mortgage shall be deemed to be void.

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

20.4.8.8 The provisions of this Section 20.4.8 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by TxDOT and the Lender.

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

20.4.9.1 The Collateral Agent has delivered to TxDOT (a) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (b) concurrently with such written notice a payment in good funds in the amount set forth in Exhibit 21. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend;

20.4.9.2 The Collateral Agent or its Substituted Entity has obtained ownership of the Developer's Interest and full possession, custody and control of the Facility to the exclusion of Developer; and

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

20.4.10 The Collateral Agent shall have the option to extend the 180-day deadline set forth in Section 20.4.4 or, if applicable, the 180-day deadline after obtaining possession set forth in Section 20.4.6 or the 180-day deadline set forth in Section 20.4.8.4(b), by up to but not exceeding an additional 180 days, provided that all the following conditions precedent have been satisfied by not later than 15 days before the deadline to be extended:

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

20.4.10.2 The Collateral Agent has met all the requirements set forth in (a) Section 20.4.4, (b) Sections 20.4.5 and 20.4.6 or (c) Section 20.4.8.4, as applicable;

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

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

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

20.4.11 Notwithstanding any contrary provisions of the FA Documents, in the event a Lender or its Substituted Entity obtains ownership of the Developer's Interest and full possession, custody and control of the Facility to the exclusion of Developer, all Noncompliance Points accumulated prior to the date the Lender or Substituted Entity obtains ownership and

possession shall be reduced to zero. The foregoing shall not, however, excuse the Lender or its Substituted Entity from any obligation to cure prior uncured breaches or failures to perform under the FA Documents, and except for determination of Persistent Developer Default shall not affect any rights and remedies available to TxDOT respecting uncured breaches or failures to perform.

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

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

20.5 Forbearance

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

20.5.2 At TxDOT's request from time to time, Developer shall provide to TxDOT written reports on the status of any such default, cure and exercise of remedies.

20.6 Substituted Entities

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

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

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

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

20.7 Receivers

20.7.1 The appointment of a receiver at the behest of Developer shall be subject to TxDOT's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender not in compliance with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 shall be void and may be challenged by TxDOT in any proceeding. The appointment of a receiver at the behest of any Lender in compliance with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4 shall be subject to the following terms and conditions:

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

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

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

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

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

20.8 Other Lender Rights

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

20.8.2 The creating or granting of a Security Document shall not be deemed to constitute an assignment or transfer of this Agreement, the leasehold estate under the Lease or the Developer's Interest, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Agreement, the leasehold estate under the Lease or the Developer's Interest so as to require such Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed hereunder or thereunder. No Lender, nor any owner of the leasehold estate under the Lease or the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of this Agreement or the Lease unless and until such time as the Lender or such owner becomes the owner of the Developer's Interest. Upon any permitted assignment of this Agreement, the Lease and the Developer's Interest by a Lender or any owner of the Developer's Interest whose ownership shall have been acquired by, through, or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue hereunder or thereunder from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to TxDOT a recordable instrument of assumption as required under Section 21.5.

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

20.8.4 The exercise by a Lender of its rights with respect to the Developer's Interest under its Security Documents, this Article 20, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Security Documents, or by any conveyance from

Developer to the Lender in lieu of foreclosure thereunder, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of TxDOT or constitute a breach of any provision of or a default under the FA Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities pursuant to Section 20.6 (and the definition of Substituted Entity).

20.8.5 Whenever TxDOT or Developer obtains knowledge of any condemnation proceedings by a third party affecting the Facility or Facility Right of Way, it shall promptly give notice thereof to each Lender. Each Lender shall have the right to intervene and be made a party to any such condemnation proceedings, and TxDOT and Developer do hereby consent that each Lender may be made such a party or an intervener.

20.9 Consents and Estoppel Certificates

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

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

20.9.1.2 As to the validity and force and effect of this Agreement, in accordance with its terms;

20.9.1.3 As to the existence of any Developer Default;

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

20.9.1.5 As to the then accumulated amount of Noncompliance Points;

20.9.1.6 As to the existence of any claims by TxDOT regarding this Agreement;

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

20.9.1.8 As to whether a specified acceptance, approval or consent of TxDOT called for under this Agreement has been granted;

20.9.1.9 Whether the Lender and its Funding Agreements and Security Documents, or the proposed Lender and its proposed Funding Agreements and Security Documents, meet the conditions and limitations set forth in Sections 4.3 and 20.1; and

20.9.1.10 As to any other matters of fact within TxDOT's knowledge about the FA Documents, the Principal Facility Documents, Developer, the Facility or the Work as may be reasonably requested.

20.9.2 TxDOT shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 days after receiving its written request, provided that the request is delivered to TxDOT either before the Substituted Entity or proposed Substituted Entity succeeds to the Developer's Interest or within 60 days after the Substituted Entity has succeeded to the Developer's Interest.

20.9.3 Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on TxDOT.

20.9.4 Upon receipt of written request from the Collateral Agent (or any other Lender of Facility Debt that has no participating Lenders), and provided that the requesting Lender is then entitled to the protections of this Article 20, TxDOT shall enter into a direct agreement with the Collateral Agent or Lender setting forth the precise provisions of this Article 20. Any direct agreement as it may be amended on or after the Amendment Effective Date shall be in the form set forth in Exhibit 25.

20.10 No Surrender

No mutual agreement to cancel or surrender this Agreement or the Lease shall be effective unless consented to in writing by the Collateral Agent, which consent Developer shall be solely responsible to obtain.

ARTICLE 21. ASSIGNMENT AND TRANSFER

21.1 Restrictions on Assignment, Subletting and Other Transfers

21.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey transfer, pledge, mortgage or otherwise encumber the Developer's Interest or any portion thereof without TxDOT's prior written approval, except:

21.1.1.1 To Lenders for security as permitted by this Agreement, provided Developer retains responsibility for the performance of Developer's obligations under the FA Documents;

21.1.1.2 To any Lender affiliate that is a Substituted Entity or to any other Substituted Entity approved by TxDOT; provided that such Substituted Entity assumes in writing full responsibility for performance of the obligations of Developer under this Agreement, the Lease, the other FA Documents, and the Principal Facility Documents arising from and after the date of assignment; or

21.1.1.3 To any entity that is under the same ultimate management control as Developer.

21.1.2 Developer shall not sublease or grant any other special occupancy or use of the Facility to any other Person that is not in the ordinary course of Developer performing the Work, without TxDOT's prior written approval.

21.1.3 Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use in violation of this provision shall be null

and void *ab initio* and TxDOT, at its option, may, by Warning Notice, declare any such attempted action to be a material Developer Default.

21.2 Restrictions on Change of Control

21.2.1 Developer shall not voluntarily or involuntarily cause, permit or suffer any Change of Control at any time prior to five years after the last Service Commencement Date. Thereafter, any Change of Control of Developer shall be subject to TxDOT's prior written approval in accordance with Section 21.3.

21.2.2 If there occurs any voluntary or involuntary Change of Control without TxDOT's prior written approval, TxDOT, at its option, may, by Warning Notice, declare it to be a material Developer Default.

21.3 Standards and Procedures for TxDOT Approval

21.3.1 Where TxDOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use, or for any proposed Change of Control, and such transaction is proposed at any time during the period ending five years after the last Service Commencement Date, TxDOT may withhold or condition its approval in its sole discretion. Any such decision of TxDOT to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

21.3.2 Thereafter, TxDOT shall not unreasonably withhold its approval thereto. Among other reasonable factors and considerations, it shall be reasonable for TxDOT to withhold its approval if:

21.3.2.1 Developer fails to demonstrate to TxDOT's reasonable satisfaction that the proposed assignee, sublessee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (collectively the "transferee"), and its proposed contractors (a) have the financial resources, qualifications and experience to timely perform Developer's obligations under the FA Documents and Principal Facility Documents and (b) are in compliance with TxDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest;

21.3.2.2 Less than all of Developer's Interest is proposed to be assigned, conveyed, transferred, pledged, mortgaged, encumbered, sublet or granted; or

21.3.2.3 At the time of the proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of other special occupancy or use requiring TxDOT's prior approval, or of any proposed Change of Control, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute a Developer Default, unless TxDOT receives from the proposed transferee assurances of cure and performance acceptable to TxDOT in its good faith discretion.

21.3.3 TxDOT will approve or disapprove within 30 days after it receives from Developer a Submittal consisting of a request for approval together with (a) a reasonably detailed description of the proposed transaction, (b) such information, evidence and supporting documentation as TxDOT may request concerning the identity, financial resources,

qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors and (c) such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as TxDOT may reasonably request. TxDOT will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to TxDOT requests for qualifications for concession or similar agreements for comparable projects and facilities.

21.3.4 If for any reason TxDOT does not act within such 30-day period, or any extension thereof by mutual agreement of the Parties, then the provisions of Section 6.3.4.2 shall apply.

21.4 Assignment by TxDOT

TxDOT may assign all or any portion of its rights, title and interests in and to the FA Documents, Payment and Performance Bond(s), guarantees, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Person that succeeds to the governmental powers and authority of TxDOT, provided such Person assumes TxDOT's obligations remaining to be performed with respect to the TxDOT Works, and (b) to others with the prior written consent of Developer. TxDOT also may assign, without Developer's consent, all or any portion of its rights, title and interests in and to revenue streams from Developer under the FA Documents, together with Payment and Performance Bond(s), guarantees, letters of credit and other security for payment of such revenue streams and TxDOT's rights to enforce payment of such revenue streams other than rights to terminate this Agreement and the Lease, to any trustee, credit enhancer or swap counterparty with respect to bonds or other indebtedness issued by TxDOT or a related entity or instrumentality as security for repayment of the bonds or other indebtedness.

21.5 Notice and Assumption

21.5.1 Assignments and transfers of the Developer's Interest permitted under this Article 21 (other than pursuant to Section 21.1.1.1) or otherwise approved in writing by TxDOT shall be effective only upon TxDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to TxDOT, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under this Agreement, the Lease and the other FA Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer.

21.5.2 Each transferee, including any Person who acquires the Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the Developer's Interest subject to, and shall be bound by, the Facility Management Plan, the Key Contracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Facility or the Work, except to the extent otherwise approved by TxDOT in writing in its good faith discretion.

21.5.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and transferee shall give TxDOT written notice of the assignment not less than 30 days prior to the effective date thereof.

21.6 Change of Organization or Name

21.6.1 Developer shall not change the legal form of its organization in a manner that adversely affects TxDOT's rights, protections and remedies under the FA Documents without the prior written approval of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion.

21.6.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

ARTICLE 22. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

22.1 Maintenance and Inspection of Records

22.1.1 Developer shall keep and maintain in Tarrant County, Texas, or in another location TxDOT approves in writing in its sole discretion, all books, records and documents relating to the Facility, Facility Right of Way, Utility Adjustments or Work, including copies of all original documents delivered to TxDOT. Developer shall keep and maintain such books, records and documents in accordance with applicable provisions of the FA Documents, Section 2.1.9 of the Technical Provisions, and of the Facility Management Plan, and in accordance with Good Industry Practice. Developer shall notify TxDOT where such records and documents are kept.

22.1.2 Developer shall make all its books, records and documents available for inspection by TxDOT and the Independent Engineer and their Authorized Representatives and legal counsel at Developer's principal offices in Texas, or pursuant to each Intellectual Property Escrow, at all times during normal business hours, without charge. Developer shall provide, or make available for review pursuant to each Intellectual Property Escrow, to TxDOT and the Independent Engineer copies thereof (a) as and when expressly required by the FA Documents or (b) for those not expressly required, upon request and at no expense to Developer. TxDOT may conduct any such inspection upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 22.1.2 are subject to the following:

22.1.2.1 Developer reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions, provided that in no event shall Developer be entitled to assert any such exemption to withhold traffic and revenue data; and

22.1.2.2 Unless otherwise lawfully required by the FHWA, Developer may make available copies of books, records and documents containing trade secrets and confidential proprietary information with such information redacted, provided Developer deposits unredacted copies thereof in an Intellectual Property Escrow within five Business Days after receiving TxDOT's notice, and without restriction on TxDOT's right of access thereto for inspection. Unless otherwise lawfully required by the FHWA, TxDOT shall have no right to make extracts of such trade secrets and confidential proprietary information except in connection with resolution of Claims and Disputes. In no event shall Developer be entitled to apply this Section 22.1.2.2 to traffic and revenue data.

22.1.3 Developer shall retain records and documents for the respective time periods set forth in the Texas State Records Retention Schedule, or, if not addressed in the Texas State Records Retention Schedule, for a minimum of five years after the date the record or document is generated; provided that if the FA Documents or applicable Law specify any longer time period for retention of particular records, such time period shall control. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved. Refer to Attachment 1 to Exhibit 8 regarding applicable federal requirements and to Section 8.8.4 regarding the time period for retention of Patron Confidential Information.

22.2 Audits

22.2.1 TxDOT shall have such rights to review and audit Developer, its Contractors and their respective books and records as and when TxDOT deems necessary for purposes of verifying compliance with the FA Documents and applicable Law. Without limiting the foregoing, TxDOT shall have the right to audit (a) Developer's Facility Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Facility Management Plan and its component parts, plans and other documentation, and (b) books and records pertaining to Developer's certifications pursuant to Section 10.16.2. TxDOT may conduct any such audit of books and records upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

22.2.2 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 expiration of the term of this Agreement. Thereafter, TxDOT shall provide 20 days' notice to Developer, any Contractors or their respective agents before commencing an audit. Developer, Contractors or their agents shall provide adequate facilities, acceptable to TxDOT, for the audit during normal business hours. Developer, Contractors or their agents shall cooperate with the auditors. Failure of Developer, Contractors or their agents to maintain and retain sufficient books and records to allow the auditors to verify all or a portion of the Claim or to permit the auditor access to such books and records shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim:

- 22.2.2.1** Daily time sheets and supervisor's daily reports;
- 22.2.2.2** Union agreements;
- 22.2.2.3** Insurance, welfare, and benefits records;
- 22.2.2.4** Payroll registers;
- 22.2.2.5** Earnings records;
- 22.2.2.6** Payroll tax forms;
- 22.2.2.7** Material invoices and requisitions;

- 22.2.2.8** Material cost distribution work sheet;
- 22.2.2.9** Equipment records (list of company equipment, rates, etc.);
- 22.2.2.10** Contractors' (including Suppliers') invoices;
- 22.2.2.11** Contractors' and agents' payment certificates;
- 22.2.2.12** Canceled checks (payroll and Suppliers);
- 22.2.2.13** Job cost report;
- 22.2.2.14** Job payroll ledger;
- 22.2.2.15** General ledger;
- 22.2.2.16** Cash disbursements journal;
- 22.2.2.17** Daily records of Toll Revenues;
- 22.2.2.18** All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and
- 22.2.2.19** Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

22.2.3 Full compliance by Developer with the provisions of this Section 22.2 is a contractual condition precedent to Developer's right to seek relief on a Claim under Section 17.8.

22.2.4 Rights of the Independent Engineer to review and audit Developer, its Contractors and their respective books and records are set forth in Section 9.3, in the Technical Provisions and in the Independent Engineer Joint Work Authorization. Any rights of the FHWA to review and audit Developer, its Contractors and their respective books and records are set forth in Attachment 1 to Exhibit 8.

22.2.5 TxDOT's and the Independent Engineer's rights of audit include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of books and records.

22.2.6 Developer shall include in the Facility Management Plan internal procedures to facilitate review and audit by TxDOT, the Independent Engineer and, if applicable, FHWA.

22.2.7 Developer represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with TxDOT or Independent Engineer audits, and shall cause all Contractors other than TxDOT and Governmental Entities acting as Contractors to warrant the completeness and accuracy in all

material respects of all information such Contractors provide in connection with TxDOT or Independent Engineer audits.

22.2.8 Developer's internal and third party quality and compliance auditing responsibilities shall be set forth in the Facility Management Plan, consistent with the audit requirements referred to in Section 9.1.6 and described in Attachment 2-1 to the Technical Provisions. In addition, Developer shall perform Audit Inspections as set forth in Section 19.4 of the Technical Provisions.

22.2.9 Nothing in the FA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor, in carrying out his or her legal authority. Developer understands and acknowledges that (a) the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract, (b) acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds, and (c) an entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

22.3 Public Information Act

22.3.1 Developer acknowledges and agrees that all submittals, records, documents, drawings, plans, specifications and other materials in TxDOT's possession, including materials submitted by Developer to TxDOT, are subject to the provisions of the Public Information Act. If Developer believes information or materials submitted to TxDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Information Act or is excepted from disclosure under the Public Information Act, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or 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 Section 22.3 shall modify or amend requirements and obligations imposed on TxDOT by the Public Information Act or other applicable Law, and the provisions of the Public Information 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.

22.3.2 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 consultants.

22.3.3 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. Except in the case of TxDOT's voluntary intervention or participation in litigation, Developer shall pay and reimburse TxDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, TxDOT incurs in connection with any litigation, proceeding or request for disclosure.

22.4 Intellectual Property

22.4.1 All Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to TxDOT. Notwithstanding the foregoing, TxDOT shall have, without fee or charge, (a) a perpetual, irrevocable license to the data generated by the HOV Registration and Declaration System, and (b) a perpetual, irrevocable right to the HOV Registration and Declaration System technology, as more particularly provided in Section 11.3 of the CSLA.

22.4.2 TxDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of Developer, including with respect to Technology Enhancements, Source Code and Source Code Documentation, solely in connection with the Facility and any Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity; provided that TxDOT shall have the right to exercise such license only at the following times:

22.4.2.1 From and after the expiration or earlier termination of the Term for any reason whatsoever;

22.4.2.2 During any time that TxDOT is exercising its step-in rights pursuant to Section 17.3.4.1, in which case TxDOT may exercise such license only in connection with the Facility; and

22.4.2.3 During any time that a receiver is appointed for Developer, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Developer is the debtor, in which case TxDOT may exercise such license only in connection with the Facility.

22.4.3 Subject to the license and rights granted to TxDOT pursuant to Section 22.4.2, TxDOT shall not at any time sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

22.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of TxDOT generally or with respect to the Facility.

22.4.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a Highway or other road, tolled or not tolled, and to the concessionaires,

contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of TxDOT or any such State or regional Governmental Entity in connection with the Facility or another Highway or other road, tolled or untolled. All such sublicenses shall be subject to Section 22.4.6.

22.4.6 Subject to Section 22.3, TxDOT shall:

22.4.6.1 Not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of TxDOT relating thereto;

22.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and

22.4.6.3 Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

22.4.7 Notwithstanding any contrary provision of this Agreement, in no event shall TxDOT or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 22.4.6 if such breach is not the result of gross negligence or intentional misconduct. Developer hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Developer's equitable remedies set forth in Section 17.6.4.4.

22.4.8 Developer shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

22.4.9 With respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, owned by a Person other than Developer, including any Affiliate, and other than TxDOT or a Governmental Entity acting as a Contractor, Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Facility, both for Developer and TxDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Facility and any Highway, tolled or not tolled, owned and operated by TxDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 22.4.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to TxDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by TxDOT set forth in Sections 22.4.3 through 22.4.6 shall also apply to TxDOT's licenses in such Proprietary Intellectual Property.

22.4.10 Nothing in this Section 22.4 abridges, changes or applies to the rights and licenses that TxDOT holds pursuant to the certain Agreement for the Provision and Implementation of a Central System and License Agreement between Developer and Cintra Toll Services LLC dated May 16, 2014.

22.5 Intellectual Property Escrows

22.5.1 TxDOT and Developer acknowledge that Developer and/or Contractors that supply software, Source Code, Financial Modeling Data or other Proprietary Intellectual Property may not wish to deliver the Proprietary Intellectual Property directly to TxDOT, as public disclosure could deprive Developer and/or Contractors of commercial value. Developer further acknowledges that TxDOT and the Independent Engineer nevertheless must be ensured access to such Proprietary Intellectual Property at any time, and must be assured that the Proprietary Intellectual Property is released and delivered to TxDOT in either of the following circumstances:

22.5.1.1 In the case of Proprietary Intellectual Property owned by Developer or any Affiliate, (a) this Agreement is terminated for Developer Default, (b) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Developer occurs, (c) Developer is dissolved or liquidated or (d) Developer fails or ceases to provide services as necessary to permit continued use of the Proprietary Intellectual Property pursuant to the license or any sublicense thereof.

22.5.1.2 In the case of Proprietary Intellectual Property owned by a Contractor (other than a Contractor that is an Affiliate), this Agreement is terminated for any reason (including TxDOT Default) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing the Proprietary Intellectual Property that is the subject of a license under Section 22.4.

22.5.2 In lieu of delivering the Proprietary Intellectual Property directly to TxDOT and the Independent Engineer, Developer may elect to deposit it with a neutral custodian. In such event, Developer shall (a) select, subject to TxDOT's prior approval, one or more escrow companies or other neutral custodian (each an "Escrow Agent") engaged in the business of receiving and maintaining escrows in Tarrant or Travis County, or in another location TxDOT approves in writing in its sole discretion, of Source Code or other Intellectual Property, and (b) establish one or more escrows (each an "Intellectual Property Escrow") with the Escrow Agent in such location on terms and conditions reasonably acceptable to TxDOT and Developer for the deposit, retention and upkeep of Source Code, Source Code Documentation and/or other Proprietary Intellectual Property and related documentation. The location of such escrows is limited to Tarrant or Travis County, or another location TxDOT approves in writing in its sole discretion, provided that the escrow containing the Financial Model Formulas, Base Case Financial Model, Base Case Financial Model Updates, Financial Modeling Data and related materials must be located within a radius of ten miles from TxDOT's headquarter building. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of their Proprietary Intellectual Property. TxDOT shall not be responsible for the fees and costs of the Escrow Agent.

22.5.3 If Developer elects to deliver Proprietary Intellectual Property to an Intellectual Property Escrow, Developer shall make such delivery to the Escrow Agent not later than the following times:

22.5.3.1 For pre-existing Source Code and Source Code Documentation, immediately upon execution of this Agreement or, if provided by a Contractor, execution of the relevant Contract;

22.5.3.2 For Source Code and Source Code Documentation incorporated into or used on or for the Facility or any portion thereof, prior to the applicable Service Commencement Date;

22.5.3.3 For any Technology Enhancement, update, upgrade or correction of Source Code and Source Code Documentation incorporated into or used on or for the Facility or any portion thereof, not later than 15 days after the end of the calendar quarter in which it is first incorporated or used;

22.5.3.4 For the Financial Model Formulas, Base Case Financial Model, Base Case Financial Model Update (including the Base Case Financial Model Update (3C) and, if applicable, the Base Case Financial Model Update for GP Capacity Improvements, as described in Section 5.2.1.6), Financial Modeling Data and related materials, the times set forth in Section 22.5.6;

22.5.3.5 For Initial Funding Agreements and Initial Security Documents, on the Effective Date, for Segment 3C Initial Funding Agreements and any amendments and supplements to Initial Security Documents in connection with closing of the Segment 3C Initial Facility Debt, on the date of Financial Close (3C), and for amendments and supplements thereto, within 30 days after they are executed and delivered;

22.5.3.6 For other Funding Agreements and Security Documents and amendments and supplements thereto, within 30 days after they are executed and delivered; and

22.5.3.7 For any other Proprietary Intellectual Property, (a) on the Effective Date if it exists as of such date, (b) within five days after the Amendment Effective Date if for Proprietary Intellectual Property pertaining to the Segment 3C Facility Segment (such as the confidential portions of the TxDOT-approved Segment 3C Plan of Finance, the Design-Build Contract for the Segment 3C Facility Segment, other Key Contracts and Key Contract amendments for the Segment 3C Facility Segment, and other Contracts and Contract Amendments for the Segment 3C Facility Segment), and (c) otherwise within 15 days after the end of the calendar quarter in which it is first created, reduced to practice, incorporated or used in connection with the Facility or the Work.

22.5.4 TxDOT shall be a named, intended third party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against Developer and the Escrow Agent. Each escrow agreement shall provide that neither Developer nor the Escrow Agent shall have any right to amend or supplement it, or waive any provision thereof, without TxDOT's prior written approval in its sole discretion.

22.5.5 Intellectual Property Escrows shall provide rights of access and inspection to both TxDOT and the Independent Engineer at any time, subject to terms and conditions

reasonably necessary to protect the confidentiality and proprietary nature of the contents of the Intellectual Property Escrows.

22.5.6 If Developer elects to deposit the Financial Model Formulas and the Base Case Financial Model into an Intellectual Property Escrow rather than deliver them directly to TxDOT, Developer shall:

22.5.6.1 Deposit the Financial Model Formulas and the Base Case Financial Model on or prior to the Effective Date, deposit updated Financial Model Formulas and the Base Case Financial Model approved by both Parties within five days after the Effective Date, deposit the Base Case Financial Model Update (3C) within five days after the date of Financial Close (3C), and include with each deposit of the Financial Model Formulas, the Base Case Financial Model and the Base Case Financial Model Update (3C) a complete set of the then-current Financial Modeling Data and related materials;

22.5.6.2 Also deposit, as and when prepared, each Base Case Financial Model Update and a complete set of the updated and revised Financial Modeling Data and related materials; and

22.5.6.3 Deposit them in a form or forms that are acceptable to TxDOT, that fully reveal their content on an Open Book Basis, and that will conveniently enable TxDOT at any time upon request to gain access thereto and to electronically operate and manipulate the same in order to run projections and scenarios respecting the Facility and to print out and examine such projections and scenarios.

22.5.7 The Intellectual Property Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason, until such time as both Parties mutually agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the Facility.

22.5.8 In accordance with Sections 22.5.2 through 22.5.6, Developer has elected to enter into an Intellectual Property Escrow agreement, dated as of the Effective Date, for escrowing Developer's Proprietary Intellectual Property. Any Intellectual Property Escrow agreement entered into after the Amendment Effective Date shall be in substantially the form attached to this Agreement as Exhibit 28.

22.5.9 Within five days after the Amendment Effective Date, Developer shall deliver to the Escrow Agent for the existing Intellectual Property Escrow a written notice, signed by Developer and approved by TxDOT, notifying the Escrow Agent (a) that henceforth all references in the existing Intellectual Property Escrow agreement to "Facility Agreement" mean this Amended and Restated Facility Agreement and (b) of the change in TxDOT's address for notices under Section 12 of the existing Intellectual Property Escrow agreement. The notice shall include a line for the Escrow Agent to acknowledge receipt, and Developer shall exercise its best efforts to promptly obtain two originals acknowledgements of receipt and thereupon deliver one of the same to TxDOT.

ARTICLE 23. FEDERAL REQUIREMENTS

23.1 Compliance with Federal Requirements

Developer shall comply and require its Contractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 8. If Developer uses TIFIA credit or loans to finance the Facility or any portion thereof, Developer shall provide any compliance certifications and milestone payment schedules required in connection with TIFIA, as specified in the Funding Agreements and Security Documents in respect of TIFIA. In the event of any conflict between any applicable federal requirements and the other requirements of the FA Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

23.2 Role of and Cooperation with FHWA

Developer acknowledges and agrees that FHWA will have certain approval rights with respect to the Facility, including the right to provide certain oversight and technical services with respect to the Work. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Facility.

ARTICLE 24. MISCELLANEOUS

24.1 Replacement of Independent Engineer

24.1.1 The Parties recognize that from time to time it will be necessary to replace the Independent Engineer in the event any party to the Independent Engineer Joint Work Authorization elects not to extend or renew it at expiration of its term, or in the event it is terminated in accordance with its terms prior to expiration. Whenever it becomes necessary to replace the Independent Engineer, TxDOT shall select and appoint a replacement Independent Engineer according to the terms and procedures set forth in this Section 24.1.

24.1.2 The replacement shall satisfy TxDOT's then existing rules, regulations and applicable written policies concerning organizational conflicts of interest, as well as any comparable written policies of Developer designed to assure neutrality of the Independent Engineer.

24.1.3 If TxDOT then maintains a list of firms qualified to serve as independent engineers under TxDOT comprehensive development agreements, the replacement shall be one of the listed firms and shall be selected either through TxDOT's competitive selection processes or, if permitted by applicable Law and acceptable to TxDOT, through negotiation. Developer shall have the right and obligation to consult and confer with TxDOT in the course of the competitive selection process and to participate with TxDOT in any negotiations. TxDOT may elect, however, not to select a replacement from the list and instead proceed under Section 24.1.4.

24.1.4 If TxDOT does not then maintain such a list of firms, then TxDOT shall procure a replacement through TxDOT's competitive qualification and procurement processes, and Developer shall have the right and obligation to consult and confer with TxDOT regarding the qualifications, evaluation and selection of competing firms.

24.1.5 The right to consult and confer includes the right to observe interviews of firms competing for selection, but does not include any right to observe or participate in meetings or discussions of the evaluation committee or subcommittees.

24.1.6 The Independent Engineer Joint Work Authorization with the replacement shall be on substantially the same terms and conditions as the prior Independent Engineer Joint Work Authorization, except for pricing and except for any changes in scope of work or other terms and conditions mutually acceptable to TxDOT and Developer.

24.1.7 Developer shall be obligated to execute the Independent Engineer Joint Work Authorization with the replacement unless Developer diligently participates, consults and confers with TxDOT in the selection and delivers to TxDOT, before TxDOT concludes its selection and negotiation process, written notice of objection to the firm selected or to pricing or changes in scope of work or other terms and conditions, stating the reasons for objection in reasonable detail. If Developer has the right to refuse, and does refuse, to execute an Independent Engineer Joint Work Authorization with the replacement due to such a reasonable objection, then TxDOT shall commence a new procurement to select a replacement. All the provisions of this Section 24.1 shall apply to the new procurement.

24.1.8 The Parties shall use diligent efforts to select and appoint a replacement Independent Engineer sufficiently prior to expiration or termination of the existing Independent Engineer Joint Work Authorization to permit a smooth transition of the Independent Engineer functions and responsibilities from the then-existing Independent Engineer to the replacement. If necessary, the Parties shall grant, and the then-existing Independent Engineer shall accept, short-term extensions of its Independent Engineer Joint Work Authorization to accommodate selection and appointment of the replacement and its transition into effective service.

24.2 Taxes

24.2.1 Developer shall pay, prior to delinquency, all applicable Taxes (except any Taxes imposed in relation to the design and construction of the TxDOT Works performed prior to the date of Final Acceptance therefor, or in relation to TxDOT's repairs to the TxDOT Works during the TxDOT Warranty Period). Developer shall have no right to a Compensation Event or, except as provided in Section 24.2.2, to any other Claim due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.

24.2.2 With respect to Expendable Materials that any Developer-Related Entity purchases, Developer shall submit or cause the Developer-Related Entity to submit a "Texas Sales and Use Tax Exemption Certification" to the seller of the Expendable Materials. In the event Developer is thereafter required by the State Comptroller to pay sales tax on Expendable Materials, TxDOT shall reimburse Developer for such sales tax. Reimbursement shall be due within 60 days after TxDOT receives from Developer written evidence of the State Comptroller's claim for sales tax, the amount of the sales tax paid, the date paid and the items purchased. Developer agrees to cooperate with TxDOT in connection with the filing and prosecution of any request for refund of any sales tax paid with respect to Expendable Materials. If materials purchased for the Work are not wholly used or expended on the Facility, such that they do not qualify as Expendable Materials, Developer will be responsible for applicable sales taxes.

24.3 Amendments

The FA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 7.2.6, 7.2.7, 8.1.2.2, 14.1, 14.3).

24.4 Waiver

24.4.1 No waiver of any term, covenant or condition of this Agreement or the other FA Documents shall be valid unless in writing and signed by the obligee Party.

24.4.2 The exercise by a Party of any right or remedy provided under this Agreement or the other FA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other FA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other FA Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.4.3 Except as provided otherwise in the FA Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other FA Documents.

24.4.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the FA 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 FA 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.

24.4.5 Subject to Section 13.2.10, the acceptance of any payment or reimbursement by a Party shall not waive any preceding or then-existing breach or default by the other Party of any term, covenant or condition of this Agreement or the other FA Documents, other than the other Party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement. Nor shall such acceptance continue, extend or affect: (a) the service of any notice, any Dispute Resolution Procedures or final judgment; (b) any time within which the other Party is required to perform any obligation; or (c) any other notice or demand.

24.5 Independent Contractor

24.5.1 Developer is an independent contractor, and nothing contained in the FA Documents shall be construed as constituting any relationship with TxDOT other than that of Facility developer and independent contractor, and that of landlord and tenant under the Lease.

24.5.2 Nothing in the FA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between TxDOT and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term “public-private partnership” may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give TxDOT control or joint control over Developer’s financial decisions or discretionary actions concerning the Facility and Work.

24.5.3 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 FA 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 Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

24.6 Successors and Assigns

The FA Documents shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives.

24.7 Designation of Representatives; Cooperation with Representatives

24.7.1 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 FA Documents (“Authorized Representative”). Exhibit 22 provides the initial Authorized Representative designations. A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 24.12.

24.7.2 Developer shall cooperate with TxDOT and all representatives of TxDOT designated as described above.

24.8 Survival

Developer’s and TxDOT’s representations and warranties, the dispute resolution provisions contained in Section 17.8 and the Disputes Board Agreement, the indemnifications, limitations and releases contained in Sections 7.9.5 and 16.5, the express obligations of the Parties following termination (including those set forth in Sections 19.5, 19.8 and 19.10, 20.4.8 and 22.5.7), and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The provisions of Section 17.8 and the Disputes Board Agreement shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the FA Documents.

24.9 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the FA Documents to create any 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, and the provisions for the protection of certain Lenders under Article 20) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.9, the duties, obligations and responsibilities of the Parties to the FA Documents with respect to third parties shall remain as imposed by Law. The FA Documents shall not be construed to create a contractual relationship of any kind between TxDOT and a Contractor or any Person other than Developer.

24.10 No Personal Liability of TxDOT Employees; No Tort Liability

24.10.1 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.

24.10.2 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.

24.11 Governing Law

The FA Documents shall be governed by and construed in accordance with the laws of the State of Texas.

24.12 Notices and Communications

24.12.1 Notices under the FA 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 facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

24.12.2 All notices, correspondence and other communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

NTE Mobility Partners Segments 3 LLC
9001 Airport Freeway, Suite 600
North Richland Hills, Texas 76180
Telephone: (817) 710-0502
Facsimile: (817) 710-0509
E-mail: fgaldeano@northtarrantexpress.com

24.12.3 All notices, correspondence, Submittals and other communications to TxDOT shall be marked as regarding the North Tarrant Express Facility and shall be delivered to the following address or as otherwise directed by TxDOT's Authorized Representative:

Benjamin Asher

Director of Project Finance, Debt and Strategic Contracts Division
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8611
Facsimile: (512) 416-2089
E-mail: benjamin.asher@txdot.gov

In addition, copies of all notices regarding Disputes, and termination and default notices shall be delivered to the following person:

Texas Department of Transportation
General Counsel Division
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8630
Facsimile: (512) 475-3070
E-mail: Jack.Ingram@txdot.gov

24.12.4 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 facsimile after 4:00 p.m. Central Standard or Daylight Time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by TxDOT.

24.13 Integration of FA Documents

TxDOT and Developer agree and expressly intend that, subject to Section 24.14, this Agreement, the Lease and other FA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.14 Severability

24.14.1 The invalidity or unenforceability of any clause, provision, section or part of the FA Documents or any other Principal Facility Document (other than any Design-Build Contract or any O&M Contract) shall not affect the validity or enforceability of the balance of the FA Documents or such other Principal Facility Documents, which shall be construed and enforced as if the FA Documents or such other Principal Facility Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.14.2 If any clause, provision, section or part of the FA Documents or any other Principal Facility Document (other than any Design-Build Contract or any O&M Contract) is ruled invalid (including invalid due to Change in Law) 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 Base Case Financial Model Update (or, if

there has been no Base Case Financial Model Update, the Base Case Financial Model) and TxDOT's compensation 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.

24.14.3 If after the efforts required by Section 24.14.2, the Parties mutually agree that without the section or part of the FA Documents or such other Principal Facility Documents that the court ruled to be invalid, there is no interpretation or reformation of the FA Documents or such other Principal Facility Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, the Parties can mutually agree to treat the court order as a Termination by Court Ruling pursuant to Section 19.12.

24.14.4 If after the efforts required by Section 24.14.2, the Parties are unable to mutually agree about whether, without the section or part of the FA Documents or such other Principal Facility Documents that the court ruled to be invalid, there is any interpretation or reformation of the FA Documents or such other Principal Facility Documents that could reasonably be adopted which would return the Parties to the material benefits of their original bargain, either Party can refer that question to the Disputes Board for resolution pursuant to Section 17.8. The Parties agree that if the Disputes Board determines that there is no interpretation or reformation that can be reasonably adopted which will return the Parties to the material benefits of their original bargain, such a determination by the Disputes Board shall be deemed for all purposes under this Agreement as a Termination by Court Ruling, or in the circumstances similar to those described in Section E.5 or E.6 of Exhibit 20, a Termination for Convenience or a Default Termination Event, as appropriate.

24.14.5 If there is no mutual agreement of the Parties pursuant to Section 24.14.2, a referral to the Disputes Board must occur not later than 60 days after the court order becomes final. Otherwise, the court order shall be treated as a Termination by Court Ruling pursuant to Section 19.12. The Parties may by mutual agreement extend this deadline.

24.14.6 In no event shall this Section 24.14 be construed to eliminate, delete, limit or affect the provisions of Section 19.1.1.3. This Section 24.14 shall not apply to a final court order or Disputes Board Decision described in Section 19.1.1.3.

24.15 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.

24.16 Construction and Interpretation of Agreement

24.16.1 The language in all parts of the FA Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the FA Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts, that each Party has been given the opportunity to independently review the FA Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the FA Documents. Accordingly, in the event of an ambiguity in or Dispute

regarding the interpretation of the FA Documents, the FA Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. TxDOT's final answers to the questions posed during the Proposal preparation process shall in no event be deemed part of the FA Documents and shall not be relevant in interpreting the FA Documents except as they may clarify provisions otherwise considered ambiguous.

24.16.2 The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

24.16.3 References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Exhibits, Articles and Sections refer to the Exhibits, Articles and Sections set forth in this Agreement. Where a specific Section is referenced, such reference shall include all subsections thereunder. Unless otherwise stated in this Agreement or the other FA Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other FA Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the FA Documents, it shall be deemed to be followed by the words "without limitation". Wherever reference is made in the FA Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

24.16.4 As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

24.17 Usury Savings

The FA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Texas Law (the "maximum legal rate"), if any. If, by the terms of the FA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the FA Documents shall, to the extent permitted by applicable Texas Law, be amortized, prorated,

allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

24.18 Approvals under FA Documents

24.18.1 Refer to Sections 6.3.3 and 6.3.4.1 regarding the standards for TxDOT approval or consent.

24.18.2 In all cases where approvals or consents are required to be provided under the FA Documents by Developer and no particular standard for such approvals or consents is expressly provided, such approvals or consents shall not be unreasonably withheld or delayed. In cases where sole discretion is specified, Developer's decision shall be final, binding and not subject to dispute resolution hereunder.

24.19 Release

In consideration of the Segment 3C Public Funds Amount, if any, the payments to be made pursuant to Section 7.4.7.1(b), and the mutual covenants and agreements contained in this Agreement, Developer does hereby fully, unconditionally and irrevocably release TxDOT from any Claims, Losses or other rights to compensation or other monetary relief or schedule relief, whether now known or unknown, arising out of or in connection with the amendments to the 2013 Agreement as embodied in this Agreement and the other FA Documents. TxDOT and Developer agree and acknowledge that such amendments set forth the entire consideration for the grant to Developer of the addition of the Segment 3C Facility Segment to the Facility and scope of Work, do not change or affect the Milestone Schedule Deadlines for the Segment 3A Facility Segment or Segment 3B Facility Segment, and create no right of Developer to a Relief Event, Extended Relief Event, Compensation Event, extension of the Term, or other remedy, notwithstanding any contrary provision of Article 13. For clarity, the foregoing release does not release or affect (a) claims that Developer may have under the 2013 Agreement, as it existed prior to the amendment and restatement thereof, arising out of events or circumstances occurring or existing prior to the Amendment Effective Date, or (b) claims that Developer may have under this Agreement arising out of events or circumstances independent of such amendments occurring or existing after the Amendment Effective Date.

24.20 Entire Agreement

The FA Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter, including, for the avoidance of doubt, all amendments to the 2013 Agreement prior to the Amendment Effective Date; provided, however, that the FA Documents do not supersede the terms and conditions of any Change Orders or Directive Letters issued prior to the Amendment Effective Date that are other than or in addition to amendments to the provisions of the FA Documents provided for in such Change Orders or Directive Letters.

24.21 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.

ARTICLE 25. TXDOT WORKS

25.1 General Obligations with Respect to TxDOT Works; Site Conditions; Coordination

25.1.1 TxDOT shall perform or cause to be performed all engineering and construction activities appropriate for development of the TxDOT Works, including (a) technical studies and analyses; (b) geotechnical investigations; (c) right-of-way mapping, surveying and appraisals; (d) Utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys. Developer shall have no obligation to design, construct, complete or pay for design, construction or completion of the TxDOT Works.

25.1.2 TxDOT shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site of the TxDOT Works or the related Existing Improvements and surrounding locations (except the Site of the Facility other than the TxDOT Works), and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by TxDOT or any other Person.

25.1.3 Subject to Section 25.1.6 and to the extent not caused by Developer-Related Entities, until the TxDOT Substantial Completion Date, TxDOT shall bear the risk to the design and construction of the TxDOT Works of all conditions occurring on, under or at the Site of the TxDOT Works and the related Existing Improvements, including (a) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) Utility facilities, (e) the presence or discovery of Hazardous Materials, including contaminated groundwater, (f) the discovery at, near or on the Facility Right of Way of any archeological, paleontological or cultural resources, and (g) the discovery at, near or on the Facility Right of Way of any Threatened or Endangered Species.

25.1.4 TxDOT shall provide all superintendence, labor, materials, equipment and tools, services, utilities, furnishings and all other goods, facilities and things, whether of a temporary or permanent nature, required in and for such design, engineering, procurement, construction and completion of the TxDOT Works.

25.1.5 Subject to Section 25.1.6, in connection with design and construction of the TxDOT Works, TxDOT shall take full responsibility for the adequacy, stability and safety of the Facility Right of Way where the TxDOT Works are at any time located or to be located and methods of construction.

25.1.6 The warranties under Section 25.7, together with the Compensation Amount available under Section 13.2.6.13, are Developer's sole and exclusive remedy regarding TxDOT Works Defects after TxDOT Substantial Completion.

25.1.7 TxDOT is not acting as, and nothing in this Agreement shall be construed as TxDOT acting as, a contractor or subcontractor to Developer with respect to design and construction of the TxDOT Works.

25.1.8 On or prior to Financial Close and within two Business Days after receipt of written notice from Developer, TxDOT shall provide reasonable access to Developer or its designated third party consultants or advisors to the Segment 3B Facility Segment construction site as well as to any studies, construction memoranda or other technical, financial, engineering, design, construction, or other information available to TxDOT related to the TxDOT Works. In exercising such access to the construction site, Developer shall not interfere with or inhibit the construction activities, shall not attempt to give directions to any TxDOT contractor or subcontractor or employee, and shall comply with all jobsite safety practices, procedures and requirements of TxDOT and its contractors; provided, that the Parties hereto hereby agree that the mere provision of access to Developer and/or its designated third party consultants or advisors and presence of such Person on the construction site for the Segment 3B Facility Segment for purposes of observation in itself does not constitute an interference with or an inhibition of any construction activities with respect to the Segment 3B Facility Segment.

25.2 Governmental Approvals and Third Party Agreements

25.2.1 Notwithstanding anything to the contrary set forth in this Agreement or any of the other FA Documents, TxDOT shall obtain all Governmental Approvals and all third party approvals and agreements required to be obtained in connection with the design and construction of the TxDOT Works, including any modifications, renewals and extensions of such approvals and agreements, including those required in connection with a Compensation Event affecting design or construction.

25.2.2 Any such agreements with a Governmental Entity, Utility Owner, railroad, property owner or other third party shall be in accordance with TxDOT's standard policies and procedures governing such agreements.

25.3 Performance, Design and Construction Standards; Developer's Obligations

25.3.1 TxDOT shall, at its cost, furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate to perform the TxDOT Works and maintain them during construction, so as to achieve TxDOT Substantial Completion by the Expected TxDOT Substantial Completion Date, as it may be extended pursuant to Section 25.6.

25.3.2 TxDOT shall design, engineer, procure, construct and complete the TxDOT Works in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in Specifications for the TxDOT Works and all other relevant standard TxDOT practices and specifications, (c) the Milestone Schedule, (d) all Laws, and (e) the requirements, terms and conditions set forth in all Governmental Approvals.

25.3.3 Subject to Section 9.3.1.2, TxDOT shall have sole responsibility for oversight of ongoing design and construction of the TxDOT Works. At reasonable times and with such prior notice as may be set forth in the coordination plan to be prepared pursuant to Section 11.1.1.3, Developer and the Independent Engineer shall be entitled to access to quality assurance and quality control documents and inspection documents for the TxDOT Works, throughout the course of design and construction of the TxDOT Works and so long thereafter as TxDOT holds such documents under its records retention policies.

25.3.4 Developer and the Independent Engineer shall be entitled to reasonable access to the job site during construction of the TxDOT Works and until the Service Commencement Date for the Segment 3B Facility Segment to attend TxDOT's inspections and testing of the TxDOT Works, to perform Work relating to Developer's installation of the ITS and tolling systems, and to perform any other Developer obligations as to the Segment 3B Facility Segment that commence under this Agreement prior to such Service Commencement Date. Developer shall provide reasonable prior notice to TxDOT of any entry pursuant to this provision, including a description of the scope and location of such proposed installation-related work or of any other activity, as shall be more particularly set forth in the coordination plan to be prepared pursuant to Section 11.1.1.3. In undertaking the activities described in this Section, unless otherwise agreed to by TxDOT, Developer (i) shall cooperate with TxDOT and coordinate its Work so that it does not delay the Expected TxDOT Substantial Completion Date or require resequencing or redeployment of TxDOT work or labor forces from activities required to accomplish the Expected TxDOT Substantial Completion Date, (ii) shall not attempt to give directions to any TxDOT contractor or subcontractor or employee, and (iii) shall comply with all job site safety practices, procedures and requirements of TxDOT and its contractors. Such right of access shall automatically cease upon execution and delivery of the amendment to Lease as provided in Section 2.1.4.

25.3.5 TxDOT shall provide Developer and the Independent Engineer with not less than 20 Days' prior written notification of the date TxDOT determines it will achieve TxDOT Substantial Completion. During such notice period:

25.3.5.1 Developer, TxDOT and the Independent Engineer shall meet and confer and exchange information on a regular cooperative basis with the goal being TxDOT's, Developer's and the Independent Engineer's orderly, timely inspection and review of the TxDOT Works for substantial compliance with the Specifications for the TxDOT Works and the plans, standards and specifications in the relevant construction contracts and for identification of patent TxDOT Works Defects, preparation of a Punch List and TxDOT's issuance of a written certificate of TxDOT Substantial Completion; and

25.3.5.2 Within the notice period specified in Section 25.3.5, the Independent Engineer shall conduct an inspection of the TxDOT Works and its components, the Specifications for the TxDOT Works, the plans, standards and specifications in the relevant construction contracts and shall perform such other investigation as may be necessary to provide written confirmation that TxDOT Substantial Completion has been achieved. The Independent Engineer shall, within five days after the end of such notice period, either (a) deliver a written confirmation of TxDOT Substantial Completion or (b) notify TxDOT in writing of the reason(s) confirmation of TxDOT Substantial Completion is not being provided; provided, however, that the failure by the Independent Engineer to provide the certificate contemplated by clause (a) shall not be deemed a confirmation or affirmation by the Independent Engineer that TxDOT Substantial Completion has occurred. Developer may, but is not obligated to, jointly with the Independent Engineer or independently conduct such inspection, review and investigation within such notice period.

25.3.5.3 The Parties shall follow the procedures set forth in Section 7.8.2 for preparing the Punch List, except that TxDOT shall prepare and maintain the Punch List and deliver to Developer and the Independent Engineer not less than five days' prior written notice stating the date when TxDOT will commence Punch List field inspections and Punch List preparation. TxDOT at its expense shall cause Punch List items, including patent TxDOT Works Defects identified by the Parties, to be diligently completed following TxDOT Substantial

Completion. If any patent TxDOT Works Defect is not eligible for treatment as a Punch List item, TxDOT shall cause it to be rectified as a condition to achieving TxDOT Substantial Completion.

25.3.6 Developer shall take over control and responsibility for the Segment 3B Facility Segment upon the TxDOT Substantial Completion Date and shall be responsible for achieving Service Commencement and Final Acceptance of the Segment 3B Facility Segment by the applicable Milestone Schedule Deadlines; provided that Developer is not responsible to complete Punch List items for the TxDOT Works as set forth in Section 7.8.4.2.

25.3.6.1 Substantial completion shall occur for the TxDOT Works and the Segment 3B Facility Segment upon satisfaction of the following criteria respecting the TxDOT Works in the Segment 3B Facility Segment (the "TxDOT Substantial Completion"):

(a) All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(b) All required illumination is installed and functional;

(c) All required signs and signals are installed and functional;

(d) The need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic in order to complete Punch List items);

(e) All lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and frontage roads) set forth in the design documents are in their final configuration and available for normal and safe use and operation;

(f) Completion of all work necessary to provide full integration with any other Facility Segment;

(g) All drainage appurtenances shall be in place and functioning;

(h) A uniform (i.e., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover for the area is established on unpaved areas or areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed; and

(i) TxDOT has otherwise completed the construction work in accordance with Specifications for the TxDOT Works and the plans, standards and specifications in the relevant construction contracts such that the Segment 3B Facility Segment is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public.

25.3.6.2 For the avoidance of doubt, TxDOT Substantial Completion shall in no event be conditioned on Developer's installation and testing of the ITS or the Electronic Toll Collection System or Developer's provision or approval of any design elements.

25.3.6.3 If TxDOT Substantial Completion is achieved prior to the Expected TxDOT Substantial Completion Date, Developer shall pay to TxDOT the positive difference (if any) of (a) all of the actual Toll Revenues collected in respect of the Segment 3B Facility Segment commencing on the first day Developer accrues Toll Revenue from the Segment 3B Facility Segment and continuing for a period equal to the number of days from the TxDOT Substantial Completion Date to and including the Expected TxDOT Substantial Completion Date, minus (b) the actual incremental costs of O&M Work incurred in respect of the Segment 3B Facility Segment for such period of toll operations, plus (c) if the Developer does not achieve Service Commencement for the Segment 3B Facility Segment before the Service Commencement Deadline therefor, interest on the net amount calculated pursuant to clauses (a) and (b) above for the period from the Service Commencement Deadline to the Service Commencement Date at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points. For this purpose, the actual incremental costs of O&M Work shall exclude the costs of O&M Work that are start-up related costs of O&M Work. Ninety days after the end of such period, Developer shall determine and prepare a report showing the calculation of such amount and deliver to TxDOT payment of such amount together with a true and complete copy of such report.

25.3.7 Notwithstanding any contrary provisions of the FA Documents, Developer bears no responsibility for performing work that would be necessary to upgrade the TxDOT Works to meet the design and construction requirements in Sections 8, 11, 12, 13, 14, 16 and 20 of the Technical Provisions unless specifically noted otherwise in Section 1 of the Technical Provisions. Notwithstanding any contrary provisions of the FA Documents, Developer bears no responsibility to cause future Renewal Work and Capacity Improvements associated with the TxDOT Works to comply with geometric design values under the Technical Provisions, and instead such Renewal Work and Capacity Improvements shall be compliant with the geometric design values indicated in the design documents for the TxDOT Works and Good Industry Practice. All other requirements and criteria in the FA Documents, including Safety Compliance, Safety Standards, and maintenance and operational requirements and criteria, shall apply to the Segment 3B Facility Segment.

25.4 Facility Right of Way for TxDOT Works

TxDOT is responsible, without cost to Developer, for undertaking and completing the acquisition of all Facility Right of Way required for the TxDOT Works.

25.5 Utility Adjustments

25.5.1 TxDOT's Responsibility

25.5.1.1 TxDOT is responsible for causing all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the TxDOT Works. All Utility Adjustment work performed by TxDOT shall be in accordance with applicable Law and shall be consistent with the Mandatory Scope and Ultimate Configuration. Regardless of the arrangements made with the Utility Owners, TxDOT shall be responsible for timely performance of all Utility Adjustment work to be performed in connection with the TxDOT Works so that upon TxDOT Substantial Completion, all Utilities that might impact the

TxDOT Works or be impacted by it (whether located within or outside the Facility Right of Way) are compatible with the TxDOT Works.

25.5.2 Utility Enhancements

TxDOT shall be responsible for addressing any requests by Utility Owners that TxDOT design and/or construct Utility Enhancements in connection with the TxDOT Works. TxDOT may, but is not obligated to, design and construct Utility Enhancements.

25.5.2.1 Notwithstanding anything to the contrary in Section 7.5, TxDOT shall be responsible for preparing, negotiating and entering into Utility Agreements with Utility Owners required for the performance of the TxDOT Works.

25.5.3 Utility Adjustment Costs

TxDOT is responsible for all costs of the Utility Adjustment Work performed in connection with the TxDOT Works, whether incurred by TxDOT or by the Utility Owner, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, and excluding (a) costs attributable to Betterment and (b) any other costs for which the Utility Owner is responsible under applicable Law at the time of Adjustment.

25.6 Schedule and Milestone Schedule Deadlines

25.6.1 TxDOT hereby agrees to and accepts the specific Milestone Schedule Deadlines set forth in Exhibit 9 related to the TxDOT Works. Developer shall not make any changes in any Facility Schedule shortening such Milestone Schedule Deadlines without TxDOT's written approval in its sole discretion.

25.6.2 Subject to Sections 4.2.1 and 13.4, TxDOT shall be entitled to extensions of the Milestone Schedule Deadline for the TxDOT Works for the period of delays caused by TxDOT Relief Events. Refer to Section 14.2.3 for extensions of the Milestone Schedule Deadlines for the TxDOT Works due to Change Requests approved by TxDOT.

25.7 Warranties

25.7.1 Contractor Warranties

25.7.1.1 If and to the extent TxDOT obtains general or limited warranties from any contractor in favor of TxDOT with respect to design, materials, workmanship, equipment, tools, supplies, software or services in connection with the TxDOT Works, TxDOT also shall cause such warranty to be expressly extended to Developer and any third parties for whom TxDOT Work is being performed or equipment, tools, supplies or software is being supplied by such contractor; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to Developer using commercially reasonable efforts. To the extent that any such contractor warranty would be voided by reason of TxDOT's negligence in incorporating material or equipment into the TxDOT Work, TxDOT shall be responsible for correcting such defect to the extent provided in Section 25.7.2.

25.7.1.2 Contractor warranties (if any) are in addition to all rights and remedies available under Section 25.7.2.

25.7.2 TxDOT Warranties

25.7.2.1 TxDOT hereby provides to Developer a limited warranty of the TxDOT Works, on the terms and conditions set forth in this Section 25.7.2.

25.7.2.2 TxDOT warrants that the TxDOT Works shall be free of patent and latent defects in design, materials, equipment and workmanship, as measured from the requirements, criteria, standards and specifications in the relevant contracts under which the TxDOT Works are constructed, including Specifications for the TxDOT Works (“TxDOT Works Defects”). A defect shall be considered latent only if it is not known or disclosed to Developer prior to the TxDOT Substantial Completion Date and would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice during the course of design and construction and prior to TxDOT Substantial Completion. This limited warranty does not apply to, and TxDOT shall not be responsible for, Work of design and construction performed by any Utility Owner on its own Utilities. This limited warranty also does not apply to, and TxDOT shall not be responsible for, repair or replacement work needed as a result of:

- (a) Normal wear and tear;
- (b) Defect caused by damage; or
- (c) Failure by Developer to maintain, repair or operate the Facility in accordance with Good Industry Practice or to comply with the Facility Management Plan, in each case to the extent the relevant TxDOT Works Defect is caused by the same.

25.7.2.3 TxDOT’s liability under this limited warranty is limited to the direct cost (a) to correct TxDOT Work Defects covered by this limited warranty and (b) to correct physical loss or harm to the Facility resulting from such TxDOT Work Defects, but only to the extent such loss or harm is not insured and not required to be insured under this Agreement (herein, “resulting uninsured physical loss”). Except as otherwise set forth in Section 13.2.6.13, TxDOT shall have no other obligation or liability to Developer arising out of or relating to TxDOT Work Defects, including for third party damage, harm, injury, loss, cost or expense and including loss of Toll Revenues.

25.7.2.4 This limited warranty shall expire three years after the TxDOT Substantial Completion Date.

25.7.2.5 TxDOT shall have no liability under this limited warranty unless it receives from Developer, prior to the deadline set forth below, written notice asserting a warranty claim and setting forth the nature and location of the TxDOT Works Defect in reasonable detail. Time is of the essence in delivering such written notice. The deadline for delivering such written notice is the first to occur of:

- (a) 60 days after Developer or a Developer-Related Entity first discovers, or in the exercise of normal asset condition inspections required under the FA Documents should have discovered, the TxDOT Works Defect; and

(b) The applicable expiration date of this limited warranty set forth in Section 25.7.2.4.

25.7.2.6 If TxDOT receives any such written notice prior to the applicable deadline, then within 30 days of receipt TxDOT and Developer shall mutually agree when and how TxDOT shall correct such TxDOT Works Defect and resulting uninsured physical loss; provided, however, that in case of an emergency or threat to safety requiring immediate corrective action, TxDOT shall implement such action as it deems necessary and shall notify Developer in writing of the urgency of such action. TxDOT shall prepare and furnish to Developer, with its recommendation for corrective action, data and reports applicable to any correction required, including revision and updating of all affected documentation. Where resulting uninsured physical loss consists only of the cost of corrective work under a deductible or self-insured retention, TxDOT may elect to pay such cost to Developer in lieu of performing the corrective work itself.

25.7.2.7 If TxDOT does not use diligent efforts to proceed to correct the TxDOT Works Defect and resulting uninsured physical loss within the agreed time, or should TxDOT and Developer fail to reach agreement within such 30-day period (or immediately in the case of emergency or unsafe conditions), Developer, after written notice to TxDOT, shall have the right to perform or have performed by third parties the necessary corrective work, and TxDOT shall bear the reasonable direct and documented costs thereof. Developer shall have the right to deduct such costs from any amounts due or to become due to TxDOT hereunder in accordance with Section 17.6.3.

25.7.2.8 Any materials or other portions of the Facility which TxDOT repairs or replaces during the TxDOT Warranty Period in accordance with this Section 25.7.2 shall be warranted by TxDOT against TxDOT Works Defects on the basis of Section 25.7.2.1 until the later of the applicable expiration date of this limited warranty and the expiration of the period ending one year after the date on which such repair or replacement is completed.

25.7.2.9 In the event that any TxDOT Works Defect appears during the TxDOT Warranty Period, Developer shall promptly after becoming aware thereof notify TxDOT of such TxDOT Works Defect.

25.7.2.10 Developer shall provide to TxDOT whatever access to the Facility is required to allow TxDOT and its contractors to execute any repair or replacement work required under this Section 25.7.2. TxDOT shall coordinate such work with Developer and shall take all reasonable steps to expedite such work and to minimize any disruption in the operations of the Facility that may be caused thereby.

25.7.2.11 All repair and replacement work for which TxDOT is responsible in accordance with this Section 25.7.2 shall be performed by TxDOT at its own cost, subject to Section 25.7.1 in respect of contractor and manufacturer warranties.

25.7.2.12 The foregoing limited warranty of the TxDOT Works is the sole and exclusive warranty from TxDOT with respect to the TxDOT Works. Except for the foregoing limited warranty, TxDOT does not provide, and hereby expressly disclaims, any and all warranties of any kind, whether express or implied, including any warranty of suitability or fitness for purpose, with respect to the TxDOT Works.

25.7.3 TxDOT Warranty Revenue Payment

25.7.3.1 No later than 30 days after the end of each calendar year during which TxDOT performs repairs of any TxDOT Works Defects pursuant to Section 25.7.2, Developer shall advise TxDOT whether, on a cumulative basis, actual Toll Revenues collected (excluding any amounts payable to TxDOT pursuant to Section 25.3.6.3) from the Service Commencement of the first Facility Segment to the end of such year exceed Toll Revenues projected in the Base Case Financial Model for the same period of time where such time period commences on the model's assumed date of Substantial Completion for that Facility Segment (excluding any amounts payable to TxDOT pursuant to Section 25.3.6.3). If Developer advises that such actual Toll Revenues have not exceeded the Toll Revenues projected in the Base Case Financial Model, TxDOT shall have the right to dispute this finding, in accordance with the Dispute Resolution Procedures.

25.7.3.2 If Developer advises that such actual Toll Revenues exceed such Toll Revenues projected in the Base Case Financial Model, or if it is determined through the Dispute Resolution Procedures that this is the case, then Developer shall provide to TxDOT the information reasonably necessary to determine the total amount, if any, of excess actual Toll Revenues attributable to the TxDOT Works Defects collected during such calendar year.

25.7.3.3 No later than 60 days after Developer provides the information specified in Section 25.7.3.2, if TxDOT determines that excess actual Toll Revenues attributable to the TxDOT Works Defects collected during such calendar year were generated, TxDOT shall deliver a written notice to Developer (the "TxDOT Warranty Revenue Notice"), which shall clearly demonstrate in reasonable detail the basis upon which TxDOT reached that determination. Developer shall promptly acknowledge receipt of such notice and may request from TxDOT any further information that Developer may reasonably require, and TxDOT shall supply the same within a reasonable period after such request.

25.7.3.4 Within 30 days from Developer's receipt of the TxDOT Warranty Revenue Notice or TxDOT's delivery of the information requested by Developer, whichever is later, Developer shall pay to TxDOT an aggregate amount equal to (a) the excess actual Toll Revenues collected during the applicable calendar year attributable to the TxDOT Works Defects less (b) the portion, if any, of the excess actual Toll Revenues attributable to the TxDOT Works that is included in the Revenue Payment Amount payable to TxDOT in respect of such year.

25.7.3.5 Any Dispute arising out of such determination shall be resolved in accordance with the Dispute Resolution Procedures.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first above written.

Developer

TxDOT

**NTE MOBILITY PARTNERS SEGMENTS 3
LLC**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Name: Alberto Gonzalez Lalueza
Title: Authorized Representative

By: _____
Name: James Bass
Title: Executive Director

By: _____
Name: _____
Title: _____

**CHANGE ORDER AGREEMENT
FOR THE NORTH TARRANT EXPRESS SEGMENT 3C FACILITY SEGMENT**

This Change Order Agreement for the North Tarrant Express Segment 3C Facility Segment (this "Change Order Agreement") is entered into and effective as of March 7, 2019 by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and NTE Mobility Partners Segments 3 LLC, a Delaware limited liability company ("Developer").

RECITALS

A. TxDOT and Developer are parties to that certain Facility Agreement, North Tarrant Express, Segments 3A & 3B Facility, dated as of March 1, 2013, as amended by Amendment Nos. 1 through 4 and 6 thereto (collectively, the "2013 Agreement").

B. Pursuant to Sections 14.1.1.3 and 14.1.2 of the 2013 Agreement, TxDOT issued to Developer on February 10, 2016 a Request for Change Proposal to add, (i) as a Facility Extension, Segment 3C of the Facility and (ii) managed lanes direct connectors with IH 820, as more particularly described in Sections 1.1.1 and 1.2.3 of Attachment B to this Change Order Agreement (together, the "Segment 3C Facility Segment") to the scope of work. (The Parties recognize that the IH 820/I-35W managed lanes direct connectors will be physically located in and added to the Segment 3A Facility Segment, but are included in the defined term "Segment 3C Facility Segment" for ease of reference.)

C. Since TxDOT issued the Request for Change Proposal, TxDOT and Developer have undertaken evaluation of the Request for Change Proposal substantially as provided in Sections 14.1.1.3, 14.1.2 and 14.1.3 of the 2013 Agreement, and have negotiated, among other things, the terms enumerated in Sections 12.1.2.3 and 14.1.5 of the 2013 Agreement for the Segment 3C Facility Segment. (TxDOT and Developer are not pursuing the addition of the Segment 3C Facility Segment to the scope of Work under Section 12.3 or 14.2 of the 2013 Agreement.)

D. TxDOT and Developer desire to pursue issuance of a Change Order for the Segment 3C Facility Segment pursuant to Sections 14.1.1.3 and 14.1.2 of the 2013 Agreement, on and subject to the terms and conditions of this Change Order Agreement.

E. Pursuant to Section 14.3 of the 2013 Agreement, TxDOT issued to Developer (1) on February 1, 2017 a Directive Letter for additional Work consisting of concurrent flow direct connectors from the Managed Lanes on Interstate Highway 35W to Belknap and Weatherford Streets (the "Downtown Connectors") and (2) on February 24, 2017 a Directive Letter for additional Work to reduce congestion and improve the connection between Interstate Highway 30 (eastbound) and the new managed lanes on Interstate Highway 35W (northbound) (the "I-30 Connector"). Developer has determined that the capital costs of the Downtown Connectors and I-30 Connector are eligible costs for purposes of applying for TIFIA loan financing for the Segment 3C Facility Segment.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, the Parties hereby agree as follows:

1. Definitions; Section References

1.1 All capitalized terms used but not defined herein have the respective meanings set forth in Exhibit 1 to the 2013 Agreement or Exhibit 1 to Attachment A to this Change Order Agreement, as applicable.

1.2 The following terms have the following meanings for purposes of this Change Order Agreement.

2013 Agreement has the meaning set forth in Recital A above.

AA-1 has the meaning set forth in Section 4.9.2(b).

Actual TIFIA Financial Terms means the same set of terms as the Assumed TIFIA Financial Terms, but in each case as finally obtained by Developer as indicated in the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt.

Allowable Third-Party Costs has the meaning set forth in Section 4.9.2(a).

Agreement has the meaning set forth in Section 2.1.1.

Assumed TIFIA Financial Terms means the quantifiable assumptions with respect to the terms and conditions of TIFIA credit assistance, respectively, for the Segment 3C Facility Segment expressly set forth in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option.

Base Case Financial Model Update (3C) has the meaning set forth in Section 4.4.4.

Benchmark Base Case Financial Model Update means (i) at any time before an election is made or deemed to be made pursuant to Section 5.2, the Base Case Financial Model Update contained in an Excel document identified as "NTE 35W – Segment 3C – Financial Model_v10.xlsm" dated October 18, 2018, which includes the PABs-Only Option as one financing scenario and the PABs/TIFIA Option as another financing scenario, and (ii) at any time thereafter, the Benchmark Base Case Financial Model Update with regard only to the PABs-Only Option (if so elected in accordance with Section 5.2) or with regard only to the PABs/TIFIA Option (if deemed elected in accordance with Section 5.2), in each case as presented by Developer and approved by TxDOT on or prior to the COA Effective Date, covering all Facility Segments and relating to the proposed implementation of the Segment 3C Change Order as well as the cost and revenue impacts of the Downtown Connectors and I-30 Connector and funding for the cost of Work for which the Segment 3C TxDOT Credit will be applied.

Benchmark Base Case Financial Model Update #2 has the meaning set forth in Section 4.3.4(a).

Benchmark Base Case Financial Model Update #3 has the meaning set forth in Section 4.3.4(b).

Benchmark Base Case FMU-1 has the meaning set forth in Section 4.9.2(a).

Benchmark Rates means the benchmark bond, swap and State and Local Government Series (SLGS) securities rates (as applicable) underlying the Segment 3C Initial Facility Debt financing contained in the Segment 3C Plan of Finance and the applicable Benchmark Base Case Financial Model Update and set forth in Attachment D to this Change Order Agreement.

Book 2 has the meaning set forth in Section 2.1.2.

Build America Bureau means the Build America Bureau within the office of the Undersecretary for Transportation and Policy of the United States Department of Transportation.

Change Order Agreement means this Change Order Agreement for the North Tarrant Express Segment 3C Facility Segment.

Closing Security means the bond or letter of credit in the amount of \$10 million provided on Developer's behalf to TxDOT on or prior to the date of execution of this Change Order Agreement.

COA Effective Date means the date of this Change Order Agreement set forth in the introductory paragraph hereof.

Commercial Closing Base Case Financial Model Update (3C) means each preliminary update of the Benchmark Base Case Financial Model Update prior to the Segment 3C Financial Closing Date, as set forth in Section 4.4.1.

Downtown Connectors has the meaning set forth in Recital E above.

Election Period has the meaning set forth in Section 5.2.

I-30 Connector has the meaning set forth in Recital E above.

Interim Equity IRR has the meaning set forth in Section 4.3.4(d)(iv).

Interim Segment 3C TxDOT Credit has the meaning set forth in Section 4.3.3.

PABs-Only Option has the meaning set forth in Section 5.2.

PABs/TIFIA Option has the meaning set forth in Section 5.2.

Revised Benchmark Base Case Financial Model Update has the meaning set forth in Section 4.3.5(a).

Segment 3C Change Order has the meaning set forth in Section 2.1.3.

Segment 3C Commercial Closing means the execution and delivery by TxDOT and Developer of the Agreement, Book 2 and the Segment 3C Change Order, as provided in Section 2.1.

Segment 3C Commercial Closing Date means the date on which all the conditions precedent set forth in Section 3.1 are satisfied (or waived in writing by the Party (or

Parties) to whose benefit such condition precedent inures), and the Parties achieve the Segment 3C Commercial Closing.

Segment 3C Financial Closing means the execution and delivery by Developer and its Lenders of binding Segment 3C Initial Funding Agreements and any binding amendments to the Initial Security Documents in connection with the Segment 3C Initial Facility Debt which, together with Developer's equity commitments for the Segment 3C Facility Segment, TxDOT's funding of up to \$18 million for ROW acquisition costs related to the Facility Extension portion of the Segment 3C Facility Segment and the Segment 3C Public Funds Amount (if any), equal at least the capital and development costs indicated in the Base Case Financial Model Update (3C), or such other amount as TxDOT approves in writing.

Segment 3C Financial Closing Date means the date on which all the conditions precedent set forth in Section 3.2 are satisfied (or waived in writing by the Party (or Parties) to whose benefit such condition precedent inures), and the Parties achieve the Segment 3C Financial Closing.

Segment 3C Financial Closing Deadline means the deadline for the Segment 3C Financial Closing, which shall be the earlier of (a) the date that is six months following the COA Effective Date, as such date may be extended pursuant to Section 5.16, or (b) eight Business Days after the Segment 3C Commercial Closing Date.

Segment 3C Initial Facility Debt means the additional Facility Debt established as of the Segment 3C Financial Closing Date and evidenced by the Segment 3C Initial Funding Agreements and secured or to be secured by the Initial Security Documents as amended in connection with the incurrence of such additional Facility Debt.

Segment 3C PABs Agreement means a PABs Agreement governing the roles and responsibilities of the parties thereto respecting issuance of the PABs for the Segment 3C Facility Segment and related matters.

Segment 3C Public Funds Amount has the meaning set forth in Section 4.3.4(e) or Section 4.3.5(f), as applicable.

Segment 3C Refinancing Gain means, in respect of the incurrence of the Segment 3C Initial Facility Debt, an amount calculated in accordance with Section 4.9.

Segment 3C TxDOT Credit has the meaning set forth in Section 4.3.4(e) and Section 4.3.5(f).

Theoretical Equity IRR has the meaning set forth in Section 4.9.2(a).

TIFIA Financing Terms Theoretical Adjustment has the meaning set forth in Section 4.7.

TIFIA Terms Adjustment Model has the meaning set forth in Section 4.7.

1.3 All references to Sections stated herein mean the Sections of this Change Order Agreement unless otherwise specified.

2. Amendment of FA Documents and Segment 3C Change Order; Segment 3C Commercial Closing

2.1 Subject to timely satisfaction or written waiver by the relevant Parties of all conditions precedent set forth in this Change Order Agreement:

2.1.1 The Parties agree to enter into and deliver on the Segment 3C Commercial Closing Date an Amended and Restated Facility Agreement, North Tarrant Express, Segments 3A, 3B & 3C Facility, in the form attached hereto as Attachment A as it will be modified pursuant to Sections 5.12 and 6.2.1 (the "Agreement");

2.1.2 The Parties agree to enter into and deliver on the Segment 3C Commercial Closing Date an Amended and Restated Book 2, in the form attached hereto as Attachment B as it will be modified pursuant to Section 5.12 ("Book 2");

2.1.3 TxDOT agrees to issue to Developer on the Segment 3C Commercial Closing Date a Change Order, and Developer agrees to countersign on the Segment 3C Commercial Closing Date a Change Order, in the form attached hereto as Attachment C (the "Segment 3C Change Order"); and

2.1.4 On the Segment 3C Financial Closing Date, Developer shall close all capital financing for Segment 3C, in accordance with Sections 5.1 and 5.3.

2.2 The purpose of the Agreement is to fully amend and restate the 2013 Agreement on the Segment 3C Commercial Closing Date in order to (a) make all modifications to the 2013 Agreement the Parties deem necessary to incorporate the Segment 3C Facility Segment into the Facility and the scope of Work, and (b) include all prior amendments of the 2013 Agreement not otherwise modified or replaced in connection with incorporating the Segment 3C Facility Segment.

2.3 The purpose of Book 2 is to fully amend and restate Book 2 (as referenced in the 2013 Agreement) on the Segment 3C Commercial Closing Date in order to (a) make all modifications thereto that the Parties deem necessary to incorporate the Segment 3C Facility Segment into the Facility and the scope of Work, and (b) include all prior amendments of Book 2 not otherwise modified or replaced in connection with incorporating the Segment 3C Facility Segment.

2.4 The Segment 3C Change Order is deemed to be issued as a Change Order as of the Segment 3C Commercial Closing Date for Developer to undertake Upgrades consisting of the Facility Extension and IH 820/I-35W managed lanes direct connectors that comprise the Segment 3C Facility Segment, as provided for in Section 14.1.1.3 of the Agreement.

3. Conditions Precedent

3.1 Conditions Precedent to Segment 3C Commercial Closing Date

3.1.1 The Parties shall proceed with the Segment 3C Commercial Closing on the date on which all the conditions precedent set forth in this Section 3.1 are fully satisfied (or waived by the relevant Parties). The deadline within which each condition precedent must be satisfied is stated for each condition precedent in parentheses, subject to waiver or extension in

writing by the Party or both Parties, as applicable, benefitting from the applicable condition precedent. Where the deadline is stated as a number of days, it is measured in calendar days.

3.1.2 The Segment 3C Commercial Closing is subject to satisfaction (or waiver in writing by the relevant Parties) of all the following conditions precedent:

(a) If applicable, Developer has submitted to the Build America Bureau a complete TIFIA letter of interest for a TIFIA loan in the amount of \$291 million (five days after the end of the Election Period, if Developer shall have not elected the PABs-Only Option in accordance with Section 5.2). The TIFIA loan (if applicable) is intended to include financing for the Segment 3C Facility Segment;

(b) The Texas Transportation Commission has adopted a minute order authorizing the PABs Issuer to issue the PABs and lend the proceeds to Developer, TxDOT, Developer and the PABs Issuer have executed the Segment 3C PABs Agreement in accordance with Section 5.8 and the PABs Issuer has adopted an inducement resolution for the PABs (60 days after the COA Effective Date);

(c) Developer has submitted to the Build America Bureau a complete application for an allocation of PABs for the Segment 3C Facility Segment in at least the amount set forth in the Benchmark Base Case Financial Model Update for the PABs-Only Option (five days after adoption of an inducement resolution by the PABs Issuer). The PABs are intended to include financing for the Segment 3C Facility Segment;

(d) Developer has submitted to at least two Rating Agencies requests and complete packages for an indicative investment grade rating for the Segment 3C Initial Facility Debt, and has received and delivered to TxDOT the communications from the Rating Agencies setting forth such indicative investment grade ratings together with the financial model(s) and assumptions accepted by such Rating Agencies as the basis for such ratings (90 days after the COA Effective Date);

(e) The Secretary of the U.S. Department of Transportation has approved a PABs allocation for the Segment 3C Facility Segment in at least the amount set forth in the applicable Benchmark Base Case Financial Model Update (45 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), which allocation is not revoked, replaced or rescinded;

(f) Developer has prepared and delivered to TxDOT an amendment to (or amendment and restatement of) the Design-Build Contract (or new Design-Build Contract) to incorporate design and construction of the Segment 3C Facility Segment (60 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), and TxDOT has approved of such amendment (or amendment and restatement or new agreement, as applicable) in writing (30 days after receipt), which approval right shall be limited to confirming that such amendment (or amendment and restatement or new agreement, as applicable) is consistent with the applicable Benchmark Base Case Financial Model Update and applicable requirements in the 2013 Agreement and this Change Order Agreement. This provision shall apply in lieu of Section 10.5.2 of the 2013 Agreement with respect to such amendment (or amendment and restatement or new agreement, as applicable);

(g) Developer has submitted to TxDOT the names and resumes of any new Key Personnel that Developer may propose in connection with the Segment 3C Facility

Segment (60 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), and TxDOT has approved in its good faith discretion such new Key Personnel in writing (30 days after receipt);

(h) Developer has submitted to TxDOT any proposed new Key Contractors and new Key Contracts or amendments thereto in connection with the Segment 3C Facility Segment (60 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), and TxDOT in its good faith discretion has approved thereof in writing (30 days after receipt), provided that the foregoing shall not apply to any Key Contracts (or amendments to existing Key Contracts (including without limitation the CSLA)) to be entered into between Developer and any ETCS service provider following the Segment 3C Commercial Closing Date;

(i) TxDOT and Developer have approved in writing an amendment to the TxDOT Tolling Services Agreement between TxDOT and Developer, and TxDOT and the NTTA have approved in writing the terms and conditions for amending the NTTA Tolling Services Agreement between TxDOT and NTTA, each to add the Segment 3C Facility Segment to the scope of services thereunder, and NTTA stands ready, willing and able to execute and deliver such amendment on the Segment 3C Commercial Closing Date (30 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(j) TxDOT, Developer and the NTTA have approved an amendment to the Joinder Agreement under the Master Custodial Account Agreement between the NTTA and Wells Fargo Bank, N.A., as custodian, to add the Segment 3C Facility Segment, and NTTA stands ready, willing and able to execute and deliver such amendment on the Segment 3C Commercial Closing Date (30 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(k) TxDOT, Developer and the trustee under the Facility Trust Agreement have approved in writing an amendment to the Facility Trust Agreement, if necessary in connection with the Segment 3C Facility Segment, and such trustee stands ready, willing and able to execute and deliver the amendment on the Segment 3C Commercial Closing Date (30 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), if applicable;

(l) TxDOT, Developer and the Independent Engineer have approved an amendment or supplement to the Joint Work Authorization to add the Segment 3C Facility Segment to the scope of the Independent Engineer's work, and the Independent Engineer stands ready, willing and able to execute and deliver such amendment or supplement on the Segment 3C Commercial Closing Date (30 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(m) TxDOT, Developer and the escrow agent under the Lease Escrow Agreement have approved in writing an amendment to the Lease Escrow Agreement to add provisions for escrowing an Amendment to Lease and Amendment to Memorandum of Lease respecting the Segment 3C Facility Segment (30 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(n) Developer has prepared a preliminary Commercial Closing Base Case Financial Model Update (3C) pursuant to Section 4.4.1 and preliminary updated Segment 3C Plan of Finance that input all changes, if any, in the terms of financing between those

assumed in the applicable Benchmark Base Case Financial Model Update and those set forth in the then most recent term sheets and draft Funding Agreements and Security Documents for the Segment 3C Facility Segment, and TxDOT has approved such updates in writing (submission to TxDOT 20 Business Days before the earlier of the scheduled Segment 3C Commercial Closing Date or the clause (a) date in the Segment 3C Financial Closing Deadline definition; continuing updates thereafter as needed or requested by TxDOT, and TxDOT approval thereof in writing, prior to the Segment 3C Commercial Closing Date);

(o) The Bond Review Board has approved issuance of the PABs (21 days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(p) If applicable, the U.S. Secretary of Transportation has given written approval of TIFIA loan financing for the Segment 3C Facility Segment, and three days' notice to Congress of such approval has elapsed without Congressional rescission of such approval (15 Business Days before the earlier of the scheduled Segment 3C Financial Closing Date or the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(q) Developer has delivered to TxDOT drafts of those proposed and final Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents that will contain the material commercial terms relating to the Segment 3C Initial Facility Debt (as and when such drafts become available but (i) for the first drafts not later than 15 Business Days before the earlier of the scheduled Segment 3C Commercial Closing Date or the clause (a) date in the Segment 3C Financial Closing Deadline definition and (ii) for the final drafts not later than the earlier of two Business Days before the scheduled Segment 3C Commercial Closing Date or seven Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), and Developer has resolved all applicable TxDOT comments thereto to TxDOT's reasonable satisfaction, which comments shall be limited to ensuring consistency with the requirements of the 2013 Agreement and this Change Order Agreement (earliest of one Business Day before the scheduled Segment 3C Commercial Closing Date or six Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition). This provision shall apply in lieu of Section 4.4.2.1 of the 2013 Agreement;

(r) Developer has delivered to TxDOT and resolved all TxDOT comments on current documentation and evidence of ownership of Developer and of upstream entities whose sole or primary business interest, direct or indirect, involves the Facility, including limited liability company agreements and other governing documents at all tiers, and of legal authority to execute and deliver the Segment 3C PABs Agreement, Agreement and other documents to be executed and delivered by Developer to TxDOT on the Segment 3C Commercial Closing Date (earlier of ten Business Days before the scheduled Segment 3C Commercial Closing Date or 15 Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(s) Legal counsel for Developer has delivered to TxDOT legal opinions in respect of the Segment 3C PABs Agreement, Agreement and other documents to be executed and delivered by Developer on the Segment 3C Commercial Closing Date, in form and substance reasonably satisfactory to TxDOT (pro forma final opinions by the earlier of five Business Days before the scheduled Segment 3C Commercial Closing Date or ten Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition, and executed opinions on the Segment 3C Commercial Closing Date);

(y) Legal counsel for TxDOT has delivered to Developer legal opinions (which will be addressed to Developer and may be relied upon by Developer and the Lenders of the Segment 3C Initial Facility Debt) in respect of the Segment 3C PABs Agreement, Agreement and other documents to be executed and delivered by TxDOT on the Segment 3C Commercial Closing Date, in form and substance reasonably satisfactory to Developer and the Lenders, which may be qualified, reasoned opinions as to authority, validity and enforceability (pro forma final opinions by the earlier of five Business Days before the scheduled Segment 3C Commercial Closing Date or ten Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition, and executed opinions on the Segment 3C Commercial Closing Date);

(u) As of the Segment 3C Commercial Closing Date, the adjustments under Section 4.1 result in a Segment 3C TxDOT Credit of at least \$30.47 million (determined before any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain), unless Developer elects in its sole discretion to provide to TxDOT a Segment 3C TxDOT Credit of \$30.47 million (plus any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain) notwithstanding that such adjustments yield a lesser amount (by the Segment 3C Commercial Closing Date);

(v) If applicable, as of the Segment 3C Commercial Closing Date, the TIFIA Financing Terms Theoretical Adjustment, if any, as determined in accordance with Section 4.7 does not exceed \$20 million (earlier of ten Business Days before the scheduled Segment 3C Commercial Closing Date or 15 Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition), unless TxDOT elects in its sole discretion to increase the Segment 3C Public Funds Amount or decrease the Segment 3C TxDOT Credit, as applicable, by the portion of the TIFIA Financing Terms Theoretical Adjustment in excess of \$20 million as provided in Section 8.1.3 (by the Segment 3C Commercial Closing Date);

(w) As of the Segment 3C Commercial Closing Date, no temporary restraining order or other form of injunction has been issued by a court with jurisdiction that prohibits prosecution of any portion of the Work and remains pending on the Segment 3C Commercial Closing Date or that prohibits or has the effect of prohibiting closing of the Initial Segment 3C Facility Debt by the Segment 3C Financial Closing Deadline;

(x) As of the Segment 3C Commercial Closing Date, there exists no Developer Default for which TxDOT has issued a Warning Notice to Developer, unless such Developer Default has an applicable cure period and is completely cured within the applicable cure period and prior to the Segment 3C Commercial Closing;

(y) As of the Segment 3C Commercial Closing Date, there exists no material TxDOT Default that is the subject of a written notice issued by Developer to TxDOT, unless such TxDOT Default is completely cured within the applicable cure period and prior to the Segment 3C Commercial Closing;

(z) The FHWA has approved the Agreement, Book 2 and the Segment 3C Change Order (earlier of one Business Day before the scheduled Segment 3C Commercial Closing Date or five Business Days before the clause (a) date in the Segment 3C Financial Closing Deadline definition);

(aa) TxDOT is reasonably satisfied that Developer's underwriters and lenders stand ready, willing and able to consummate, not later than five Business Days after the

Segment 3C Commercial Closing, financing that will meet all the requirements under Sections 5.1 and 5.4 (earlier of one Business Day before the scheduled Segment 3C Commercial Closing Date or five Business Days before the Segment 3C Financial Closing Deadline);

(bb) Developer has obtained the necessary consents (if any) from Developer's existing Lenders to the Segment 3C Initial Facility Debt and the form of the Agreement attached hereto as Attachment A (and the modifications to the agreements described in clauses (f), (i), (j), (k), (l) and (m) above, as applicable), provided that TxDOT is under no obligation whatsoever to change such form of the Agreement or modifications to such other agreements in order to suit the existing Lenders (earlier of one Business Day before the scheduled Segment 3C Commercial Closing Date or five Business Days before the Segment 3C Financial Closing Deadline); and

3.1.3 The following conditions precedent set forth in Section 3.1.2 are for the sole benefit of TxDOT: (a), (c), (d), (f), (g), (h), (n), (q), (r), (s), (u), (x) and (aa).

3.1.4 The following conditions precedent set forth in Section 3.1.2 are for the mutual benefit of TxDOT and Developer: (b), (e), (i), (j), (k), (l), (m) (o), (p), (w) and (z).

3.1.5 The following conditions precedent set forth in Section 3.1.2 are for the sole benefit of Developer: (t), (v), (y) and (bb).

3.2 Conditions Precedent to Segment 3C Financial Closing

3.2.1 Developer shall proceed with Segment 3C Financial Closing on the date on which all the conditions precedent set forth in this Section 3.2 are fully satisfied (or waived by the relevant Parties). The deadline within which each condition precedent must be satisfied is stated for each condition precedent in parentheses, subject to waiver or extension in writing by the Party or Parties benefitted by the condition precedent. Where the deadline is stated as a number of days, it is measured in calendar days.

3.2.2 The Segment 3C Financial Closing is subject to satisfaction (or waiver by the relevant Parties) of all the following conditions precedent:

(a) The Segment 3C Commercial Closing has occurred (by no later than eight Business Days before the Segment 3C Financial Closing Deadline);

(b) Developer has submitted to TxDOT the Base Case Financial Model Update (3C) in accordance with Section 5.2.1.4 of the Agreement, and TxDOT has approved such Update, which shall be based on the most recent TxDOT-approved Commercial Closing Base Case Financial Model Update (3C) and adjusted for the effect of any movement in the Benchmark Rates and spreads and other changes in financing terms assumed in the applicable Benchmark Base Case Financial Model Update since TxDOT's approval of such Commercial Closing Base Case Financial Model Update (3C) (prior to the Segment 3C Financial Closing Date);

(c) As of the Segment 3C Financial Closing Date, the adjustments under Section 4.1 result in a Segment 3C TxDOT Credit of at least \$30.47 million (determined before any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain), unless Developer elects in its sole discretion to provide to TxDOT a

Segment 3C TxDOT Credit of \$30.47 million (plus any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain) notwithstanding that such adjustments yield a lesser amount (by the Segment 3C Financial Closing Date);

(d) If applicable, as of the Segment 3C Financial Closing Date, the TIFIA Financing Terms Theoretical Adjustment, if any, as determined in accordance with Section 4.7 does not exceed \$20 million, unless TxDOT elects in its sole discretion to increase the Segment 3C Public Funds Amount (if any) or decrease the Segment 3C TxDOT Credit (if any), as applicable, by the portion of the TIFIA Financing Terms Theoretical Adjustment in excess of \$20 million as provided in Section 8.1.3 (by the Segment 3C Financial Closing Date);

(e) As of the Segment 3C Financial Closing Date, no temporary restraining order or other form of injunction has been issued by a court with jurisdiction that prohibits prosecution of any portion of the Work and remains pending on the Segment 3C Financial Closing Date or that prohibits or has the effect of prohibiting closing of the Initial Segment 3C Facility Debt by the Segment 3C Financial Closing Date;

(f) (i) The PABs Issuer has executed the relevant Segment 3C Initial Funding Agreements required to be executed by it in accordance with the terms of the Segment 3C PABs Agreement, and (ii) if applicable, the TIFIA lender has executed the loan agreement for the TIFIA loan (prior to the Segment 3C Financial Closing Deadline);

(g) As of the Segment 3C Financial Closing Date, there exists no Developer Default that is the subject of a Warning Notice issued by TxDOT to Developer, unless such Developer Default has an applicable cure period and is completely cured within the applicable cure period and prior to the Segment 3C Financial Closing; and

(h) As of the Segment 3C Financial Closing Date, there exists no material TxDOT Default under the Agreement that is the subject of a written notice issued by Developer to TxDOT, unless such TxDOT Default is completely cured within the applicable cure period and prior to the Segment 3C Financial Closing.

3.2.3 The following conditions precedent set forth in Section 3.2.2 are for the sole benefit of TxDOT: (b), (c) and (g).

3.2.4 The following conditions precedent set forth in Section 3.2.2 are for the mutual benefit of TxDOT and Developer: (a) and (e).

3.2.5 The following conditions precedent set forth in Section 3.2.2 are for the sole benefit of Developer: (d), (f) and (h).

3.3 Notice of Satisfaction of Conditions Precedent

Whenever Developer determines that a condition precedent has been satisfied, Developer shall provide to TxDOT written notice that Developer believes such condition precedent has been satisfied. Whenever TxDOT determines that a condition precedent has been satisfied, TxDOT shall provide to Developer written notice that TxDOT believes such conditions precedent has been satisfied. The foregoing shall not diminish or limit the rights of either Developer or TxDOT to object to the assertion of the other Party in connection with the satisfaction of such condition precedent.

4. Changes Affecting Financing Terms

4.1 Changes in Market Interest Rates

4.1.1 Except as set forth in Section 4.1.2, and subject to Section 8.1.2, solely with respect to PABs and TIFIA financing (if any) assumed and indicated in the applicable Benchmark Base Case Financial Model Update, TxDOT will bear the risk and have the benefit of:

(a) 100% of the impact (either positive or negative) of the differences between the interest rates assumed and indicated in the applicable Benchmark Base Case Financial Model Update and set forth in Attachment D hereto and the Benchmark Rates on the last date of the relevant market interest rate adjustment period (as defined below); and

(b) 75% of the impact (either positive or negative) of the differences between (i) the credit spreads for PABs assumed and indicated in the applicable Benchmark Base Case Financial Model Update and set forth in Attachment D hereto and (ii) the credit spreads for PABs as obtained on the last date of the relevant market interest rate adjustment period.

4.1.2 If Developer elects the PABs-Only Option and the impact of the interest rate movements contemplated in Section 4.1.1 would result in a reduction in the Segment 3C TxDOT Credit calculated in accordance with Section 4.3:

(a) By an amount less than or equal to \$6.4 million in the aggregate, then the Segment 3C TxDOT Credit shall not be reduced; or

(b) By an amount greater than \$6.4 million in the aggregate, then the Segment 3C TxDOT Credit shall be reduced by such amount minus \$6.4 million.

4.1.3 For the purposes of this Section 4.1 and Section 4.3:

(a) With respect to PABs, the "last date of the relevant market interest rate adjustment period" means the earlier of (i) the last date and time on which the applicable Benchmark Rate is published prior to the PABs pricing date and time or (ii) 3:30 pm on the date that is (A) nine months following the COA Effective Date, if Developer elects the PABs/TIFIA Option, or (B) six months following the COA Effective Date, if Developer elects the PABs-Only Option, provided that TxDOT in its sole discretion may elect to waive clause (ii) above by delivering to Developer written notice of such waiver prior to such date;

(b) With respect to the TIFIA loan (if applicable), the "last date of the relevant market interest rate adjustment period" means the earliest of (i) 10:00 a.m. on the interest rate commitment date, (ii) 10:00 a.m. on the date that is nine months following the COA Effective Date or (iii) 10:00 a.m. on the Segment 3C Financial Closing Date; and "interest rate commitment date" means the date on which the interest rate is set for the TIFIA loan, provided that TxDOT in its sole discretion may elect to waive clause (ii) above by delivering to Developer written notice of such waiver prior to such date;

(c) The Benchmark Rates shall be verifiable with either an observable screen shot, including a Bloomberg screen or Reuters screen, or a clearly defined formula/calculation that is based on an observable rate through a publicly verifiable screen shot.

(It is understood and agreed that certain types of Benchmark Rates, such as swap rates, are a combination of several rates);

(d) The movement in interest rates shall be based on a reading taken from the relevant screen shots on the last date of the market interest rate adjustment period; and

(e) If the Commercial Closing Base Case Financial Model Update (3C) at the time of PABs pricing includes changes to the maturities or coupon structure of the PABs from that used in the Benchmark Base Case Financial Model Update, the maturities and coupon structure in the Benchmark Base Financial Model Update shall not be changed. If differences in maturities or coupon structure exist, the following provisions shall apply to calculate changes to the Interim Segment 3C TxDOT Credit pursuant to Section 4.3:

(i) The Benchmark Rates shall be those published for maturities corresponding to those in the Benchmark Base Case Financial Model Update; and

(ii) For credit spreads, the PABs underwriter(s) shall provide, for TxDOT approval, pricing on the bonds including credit spreads for the maturities and coupon structure assumed in the Benchmark Base Case Financial Model Update.

4.2 Changes in Financing Terms

4.2.1 Except for changes to financial terms set forth in Section 4.1, and except as provided in Section 4.3.4(a)(vi), Developer shall bear 100% of the risk of any differences between the par amount of the PABs, principal amount of the TIFIA loan (if applicable), coverage ratios, coupon rates, payment provisions, maturities/term of debt and other terms of its financing stated or assumed in the applicable Benchmark Base Case Financial Model Update and Segment 3C Plan of Finance and those actually obtained. No such differences shall affect the calculation of the Segment 3C TxDOT Credit in accordance with Section 4.5 or the Segment 3C Public Funds Amount in accordance with Section 4.6, as the case may be. The foregoing provision does not contravene Developer's right to terminate as set forth in Section 8.1.3.

4.2.2 Solely to the extent set forth in Section 4.3.4(b) or Section 4.3.5(a), as applicable, TxDOT shall receive the benefit of any differences between the coverage ratios, coupon rates, payment provisions, maturities/term and other terms of its PABs financing stated or assumed in the applicable Benchmark Base Case Financial Model Update and Segment 3C Plan of Finance and those actually obtained. If Developer elects the PABs-Only Option and there is a benefit to the Equity IRR due to a difference between the par amount of PABs stated or assumed in the Benchmark Base Case Financial Model Update and Segment 3C Plan of Finance and the par amount actually obtained, then the par amount of the first Refinancing (in 2026) set forth in the Benchmark Base Case Financial Model Update shall be reduced to the extent necessary to maintain an Equity IRR equal to that set forth in the Benchmark Base Case Financial Model Update. If such adjustment results in reduction of the first Refinancing (in 2026) to zero, then the Refinancing Gain provisions of the Agreement shall apply to any additional par amount.

4.2.3 Except for changes to financial terms set forth in Section 4.1 and for sharing of Segment 3C Refinancing Gain as set forth in Section 4.9, Developer shall receive 100% of the benefit of any differences between the principal amount and other terms of the

TIFIA loan financing stated or assumed in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option and Segment 3C Plan of Finance and those actually obtained.

4.3 Calculation of Segment 3C TxDOT Credit or Segment 3C Public Funds Amount; Changes in Financing Terms

4.3.1 Not later than 20 Business Days prior to the scheduled Segment 3C Commercial Closing Date, Developer shall submit to TxDOT a version of the applicable Benchmark Base Case Financial Model Update which includes scenarios that have been adjusted for the then current interest rates (previously approved by TxDOT in accordance with the terms hereof) and step-by-step procedures for updating the adjusted Benchmark Base Case Financial Model Update for further changes in Benchmark Rates and credit spreads.

4.3.2 Not later than five Business Days following submission of the model required in Section 4.3.1, Developer shall meet with TxDOT to walk through the adjustment procedures. TxDOT will provide any comments or change requests it has at this meeting.

4.3.3 Each Benchmark Base Case Financial Model Update indicates a credit to TxDOT from Developer of \$45.47 million, based on the interest rates and credit spreads assumed therein (the "Interim Segment 3C TxDOT Credit"). The Interim Segment 3C TxDOT Credit shall be subject to adjustment in accordance with this Section 4.3.

4.3.4 For the PABs-Only Option, the Benchmark Base Case Financial Model Update shall be updated to determine the Segment 3C TxDOT Credit or Segment 3C Public Funds Amount according to the following procedures:

(a) Developer shall produce an update to the Benchmark Base Case Financial Model Update for the PABs-Only Option as soon as indicative investment grade ratings are received from two Rating Agencies. Such update is referred to as the "Benchmark Base Case Financial Model Update #2". The Benchmark Base Case Financial Model Update #2 shall:

(i) Adjust the par amount of the PABs to equal such lowest par amount of the PABs assumed in the financial model used to obtain the indicative investment grade ratings from the two Rating Agencies;

(ii) Increase equity contributions by the amount necessary to offset the reduced PABs par amount;

(iii) Incorporate any associated change in bond proceeds as a result of any bond premium indicated in the financial model that has been accepted by the Rating Agencies as the basis for such indicative investment grade credit ratings;

(iv) Appropriately adjust PABs debt service, debt service reserves and other items associated with a lower par amount;

(v) Hold constant all other inputs and assumptions in the Benchmark Base Case Financial Model Update for the PABs-Only Option, including coverage ratios, coupon rates, payment provisions, maturities/term of the PABs, other terms of the PABs, and amount of the Interim Segment 3C TxDOT Credit; and

(vi) Adjust upward the par amount of the first Refinancing (in 2026) set forth in the Benchmark Base Case Financial Model Update for the PABs-Only Option in order to restore the Equity IRR to the Equity IRR set forth in the Benchmark Base Case Financial Model Update for the PABs-Only Option, holding constant all other assumptions regarding the timing, interest rate and other terms for such first Refinancing.

Developer shall immediately deliver the Benchmark Base Case Financial Model Update #2 to TxDOT for its approval, and shall concurrently deliver to TxDOT an updated model audit opinion.

(b) If any one or more of the coverage ratios, coupon rates, payment provisions, maturities/term and other terms of Developer's PABs financing at the date the PABs are priced are different in any respect from those stated or assumed in the Benchmark Base Case Financial Model Update #2, and if the combined differences would result in a higher Equity IRR than the Equity IRR indicated in the Benchmark Base Case Financial Model Update #2, then the Benchmark Base Case Financial Model Update #2 shall be run in order to derive the incremental increase in the Interim Segment 3C TxDOT Credit due to inputting such differences and holding constant the Equity IRR indicated in the Benchmark Base Case Financial Model Update #2. Such further update is referred to as the "Benchmark Base Case Financial Model Update #3". Developer shall immediately deliver the Base Case Financial Model Update #3 to TxDOT for its approval. (For the avoidance of doubt, Section 4.2.2 addresses disposition of any benefit to the Equity IRR due to a difference between the par amount of PABs stated or assumed in the Benchmark Base Case Financial Model Update, the Segment 3C Plan of Finance and the par amount actually obtained.)

(c) If one or more of the coverage ratios, coupon rates, payment provisions, maturities/term and other terms of Developer's PABs financing at the time the PABs are priced are different in any respect from those stated or assumed in the Benchmark Base Case Financial Model Update #2, and if the combined difference will not result in a higher Equity IRR than the Equity IRR indicated in the Benchmark Base Case Financial Model Update #2, then Developer shall not produce a Benchmark Base Case Financial Model Update #3 and instead shall proceed to the next step set forth in Section 4.3.4(d).

(d) Immediately following the last date of the market interest rate adjustment period, Developer and TxDOT shall calculate the change, positive or negative, in the Interim Segment 3C TxDOT Credit (as previously adjusted under Section 4.3.4(b), if applicable) to reflect only those changes to financial terms permitted under Section 4.1. Such calculation shall be made as follows:

(i) The Benchmark Base Case Financial Model Update #2 or, if applicable, the Benchmark Base Case Financial Model Update #3, shall be run to derive the incremental change in the Interim Segment 3C TxDOT Credit due to inputting 100% of the change, if any, in the Benchmark Rates recognizable under Section 4.1.1(a) and holding constant the par amount of the PABs and the Equity IRR, while adjusting the Interim Segment 3C TxDOT Credit to account for the change in the Equity IRR as a result of a lower amount of PABs proceeds due to any change in bond premium. The resulting Base Case Financial Model Update will become the Financial Model - STEP 1.

(ii) The Financial Model - STEP 1 shall then be run to derive the incremental change in the Interim Segment 3C TxDOT Credit due to inputting 100% of the change, if any, in the credit spreads recognizable under Section 4.1.1(b) and holding constant

the par amount of the PABs and the Equity IRR, while adjusting the Interim Segment 3C TxDOT Credit to account for the change in the Equity IRR as a result of a lower amount of PABs proceeds due to any change in bond premium. The resulting model will become the Financial Model – STEP 2.

(iii) The initial change in the Interim Segment 3C TxDOT Credit shall equal 100% of the change to the Interim Segment 3C TxDOT Credit in Financial Model – STEP 1 and 75% of the change to the Interim Segment 3C TxDOT Credit between Financial Model – STEP 2 and Financial Model – STEP 1.

(iv) The Financial Model – STEP 2 shall be rerun inputting the Interim Segment 3C TxDOT Credit as adjusted by the interim change calculated in accordance with Section 4.3.4(d)(iii) in order to derive the resulting interim Equity IRR (the "Interim Equity IRR") for purposes of Section 4.3.4(d)(vi).

(v) The total change in the Interim Segment 3C TxDOT Credit shall equal 100% of the change to the Interim Segment 3C TxDOT Credit in Financial Model – STEP 1 and 75% of the change to the Interim Segment 3C TxDOT Credit between Financial Model – STEP 2 and Financial Model – STEP 1, provided that (A) if such calculation results in a reduction in the Interim Segment 3C TxDOT Credit in an amount less than or equal to \$6.4 million, then the total change in the Interim Segment 3C TxDOT Credit shall equal zero, and (B) if such calculation results in a reduction in the Interim Segment 3C TxDOT Credit in an amount greater than \$6.4 million, then the total change in the Interim Segment 3C TxDOT Credit shall equal the amount so calculated minus \$6.4 million.

(vi) The Financial Model – STEP 2 shall be updated with the total Interim Segment 3C TxDOT Credit amount from Section 4.3.4(d)(v) and the par amount of the first Refinancing (in 2026) adjusted to neutralize the effect of the allocation to Developer under Section 4.1.2 of up to the first \$6.4 million of adverse impact to the Equity IRR due to increased interest rates. The Interim Equity IRR determined in accordance with Section 4.3.4(d)(iv) shall be used as the target Equity IRR in this calculation. The resulting change in the par amount of the first Refinancing (in 2026) shall be recorded.

(vii) Such update shall not include (A) changes in coverage ratios, coupon rates, payment provisions, maturities/term and other terms of Developer's PABs financing from those indicated in the Benchmark Base Case Financial Model Update #2 or, if applicable, the Benchmark Base Case Financial Model Update #3, (B) any other terms and conditions included in the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt (other than interest rates and PAB proceeds), or (C) any potential errors identified as part of the updated model audit opinion provided pursuant to Section 5.11.

(viii) If the last date of the market interest rate adjustment period precedes the date the PABs are priced, then the step in this subsection (d) shall precede the steps set forth in Sections 4.3.4(b) and (c), the update shall be run from the Benchmark Base Case Financial Model Update #2, and on the date the PABs are priced the Parties shall run the step set forth in Section 4.3.4(b), if applicable, using Financial Model – STEP 2 as the basis for determining differences in coverage ratios, coupon rates, payment provisions, maturities/term and other terms of Developer's PABs financing.

(e) If all the steps set forth in this Section 4.3.4 result in a total decrease in the Interim Segment 3C TxDOT Credit by more than \$45.47 million, then the final "Segment 3C TxDOT Credit" shall equal zero and the portion of the decrease in excess of \$45.47 million shall be the final "Segment 3C Public Funds Amount" (unless further adjusted under Section 8.1.3). Any other result of the foregoing calculation shall equal the final "Segment 3C TxDOT Credit" (unless further adjusted under Section 8.1.3).

(f) Developer acknowledges that if the final Segment 3C TxDOT Credit is less than the Interim Segment 3C TxDOT Credit, then Developer will apply an amount of funds at least equal to such difference to design and construction of the non-tolled portions of the Segment 3C Facility Segment.

4.3.5 For the PABs/TIFIA Option, the Benchmark Base Case Financial Model Update shall be updated to determine the Segment 3C TxDOT Credit or Segment 3C Public Funds Amount according to the following procedures:

(a) If any one or more of the coverage ratios, coupon rates, payment provisions, maturities/term of the PABs and other terms of Developer's PABs financing at the date the PABs are priced are different in any respect from those stated or assumed in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option, and if the combined difference would result in a higher Equity IRR than the Equity IRR indicated in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option, then the Benchmark Base Case Financial Model Update shall be run in order to derive the incremental increase in the Interim Segment 3C TxDOT Credit due to inputting such differences and holding constant the Equity IRR indicated in the Benchmark Base Case Financial Model Update. Such further update is referred to as the "Revised Benchmark Base Case Financial Model Update" and shall be used for purposes of the remaining steps set forth in the clauses below. Developer shall immediately deliver to TxDOT for its approval the Revised Base Case Financial Model Update. For the avoidance of doubt, except as set forth in this Section 4.3.5(a), the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option shall not be adjusted for changes in the par amount of the PABs, principal amount of the TIFIA loan or the other terms and conditions included in the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt (other than interest rates and PAB proceeds as provided in the clauses below), and may not include any potential errors identified as part of the updated model audit opinion provided pursuant to Section 5.11.

(b) Immediately following the last date of the market interest rate adjustment period, Developer and TxDOT shall calculate the change, positive or negative, in the Interim Segment 3C TxDOT Credit by adjusting the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option or, if applicable, the Revised Base Case Financial Model Update, in accordance with this Section 4.3.5 to reflect only those changes to financial terms permitted under Section 4.1.

(c) The Benchmark Base Case Financial Model Update for the PABs/TIFIA Option or, if applicable, the Revised Base Case Financial Model Update, shall be run to derive the incremental change in the Interim Segment 3C TxDOT Credit due to inputting 100% of the changes, if any, in the Benchmark Rates recognizable under Section 4.1.1(a) and holding constant the Equity IRR, the par amount of the PABs and principal amount of the TIFIA loan (if applicable) in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option or, if applicable, the Revised Base Case Financial Model Update, while adjusting the

Interim Segment 3C TxDOT Credit to account for the change in the Equity IRR as a result of a lower amount of PABs proceeds due to any change in bond premium. The resulting financial model will become the Financial Model - STEP 1.

(d) The Financial Model - STEP 1 shall then be run to derive the incremental change in the Interim Segment 3C TxDOT Credit due to inputting 100% of the changes, if any, in spreads recognizable under Section 4.1.1(b) and holding constant the Equity IRR, the par amount of the PABs and principal amount of the TIFIA loan (if applicable) in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option or, if applicable, the Revised Base Case Financial Model Update, while adjusting the Interim Segment 3C TxDOT Credit to account for the change in the Equity IRR as a result of a lower amount of PABs proceeds due to any change in bond premium. The resulting financial model will become the Financial Model - STEP 2.

(e) The total change in the Interim Segment 3C TxDOT Credit shall equal 100% of the change to the Interim Segment 3C TxDOT Credit in Financial Model – STEP 1 and 75% of the difference to the Interim Segment 3C TxDOT Credit between Financial Model – STEP 2 and Financial Model - STEP 1.

(f) If the resulting total change in the Interim Segment 3C TxDOT Credit is a decrease of such credit by more than \$45.47 million, then the final “Segment 3C TxDOT Credit” shall equal zero and the portion of the decrease in excess of \$45.47 million shall be the final “Segment 3C Public Funds Amount” (unless further adjusted under Section 4.9 or 8.1.3). Any other result of the foregoing calculation shall equal the final “Segment 3C TxDOT Credit” (unless further adjusted under Section 4.9 or 8.1.3).

4.4 Calculation of Equity IRR; Commercial Closing and Final Base Case Financial Model Update (3C)

4.4.1 Not later than 20 Business Days before the earlier of the scheduled Segment 3C Financial Closing Date or the Segment 3C Financial Closing Deadline, Developer shall prepare and immediately deliver to TxDOT for its approval a preliminary updated Segment 3C Plan of Finance and a Commercial Closing Base Case Financial Model Update (3C). The Commercial Closing Base Case Financial Model Update (3C) shall solve, on an interim basis, for the Equity IRR, by inputting:

(a) The estimated amount of the Segment 3C TxDOT Credit determined according to Section 4.3 (including any estimated adjustment to this value pursuant to Section 4.9 or 8.1.3) or the estimated amount of the Segment 3C Public Funds Amount determined according to Section 4.3 (including any estimated adjustment to this value pursuant to Section 4.6);

(b) All changes, if any, in the terms of financing between those assumed in the applicable Benchmark Base Case Financial Model Update and those set forth in the then most recent term sheets and drafts of the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt;

(c) If applicable, and only if Developer elects the PABs-Only Option, the estimated adjusted par amount of the first Refinancing (in 2026) determined pursuant to Section 4.3.4(a)(vi), provided that if the estimated actual par amount of the PABs is greater than

the par amount assumed in the financial model used to obtain the indicative investment grade credit ratings used under Section 4.3.4(a), then the adjustment to the par amount of the first Refinancing shall be determined by applying the estimated actual par amount of the PABs. For avoidance of doubt, an estimated actual par amount of the PABs that is less than the par amount assumed in the financial model used to obtain the indicative investment grade ratings shall be Developer's sole risk and shall not be used for adjusting the par amount of the first Refinancing (in 2026); and

(d) If applicable, and only if Developer elects the PABs-Only Option, a further estimated adjustment of the par amount of the first Refinancing (in 2026) to neutralize the adverse effect on the Equity IRR of the allocation to Developer under Section 4.1.2 of up to the first \$6.4 million of adverse impact to the Equity IRR due to increased interest rates.

4.4.2 Developer shall continue to update the Segment 3C Plan of Finance, and shall continue to prepare further versions of the Commercial Closing Base Case Financial Model Update (3C), thereafter and prior to the Segment 3C Financial Closing Date as necessary or appropriate to reflect further changes in financing terms as they become known. Without limiting the foregoing, Developer shall update the Segment 3C Plan of Finance and prepare a further version of the Commercial Closing Base Case Financial Model Update (3C) on the date of PABs pricing. Developer shall immediately deliver to TxDOT each update of the Segment 3C Plan of Finance and version of the Commercial Closing Base Case Financial Model (3C), and the same shall be subject to TxDOT's approval.

4.4.3 At the Segment 3C Financial Closing, Developer shall prepare and deliver to TxDOT for its approval a final updated Segment 3C Plan of Finance and the Commercial Closing Base Case Financial Model Update (3C). The Commercial Closing Base Case Financial Model Update (3C) shall be solved for the Equity IRR by inputting:

(a) The final amount of the Segment 3C TxDOT Credit or Segment 3C Public Funds Amount, as applicable, following the adjustment to this value pursuant to Section 4.3 and any adjustment under Section 4.9 or 8.1.3;

(b) If applicable, and only if Developer elects the PABs-Only Option, the par amount of the first Refinancing (in 2026) determined pursuant to Section 4.3.4(a)(vi), provided that if the actual par amount of the PABs is greater than the par amount assumed in the financial model used to obtain the indicative investment grade credit ratings used under Section 4.3.4(a), then the adjustment to the par amount of such first Refinancing shall be determined by applying the actual par amount of the PABs. For avoidance of doubt, an actual par amount of the PABs that is less than the par amount assumed in the financial model used to obtain the indicative investment grade ratings shall be Developer's sole risk and shall not be used for adjusting the par amount of the first Refinancing (in 2026);

(c) If applicable, and only if Developer elects the PABs-Only Option, the change in the par amount of the first Refinancing (in 2026) recorded as provided in Section 4.3.4(d)(vi); and

(d) All changes, if any, in the terms of financing between those assumed in the Commercial Closing Base Case Financial Model Update (3C) and those set forth in the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt obtained as of the Segment 3C Financial Closing Date.

4.4.4 The resulting financial model, as approved by TxDOT, shall constitute the “Base Case Financial Model Update (3C)” as of the Segment 3C Financial Closing Date, and the resulting internal rate of return for Developer and its Equity Members shall be the Equity IRR.

4.5 Segment 3C TxDOT Credit

4.5.1 Subject to Section 8.1.2, if the adjustments under Sections 4.3, 4.9 and 8.1.3 result in a Segment 3C TxDOT Credit, then the amount thereof shall be documented in Part D of Exhibit 7 to the Agreement and such amount, as it may be adjusted, shall be available to TxDOT to use toward future amounts owing from TxDOT to Developer under the Agreement as more particularly set forth in the Agreement.

4.5.2 The Segment 3C TxDOT Credit, if any, shall constitute compensation to TxDOT in exchange for TxDOT’s grant to Developer of the right to toll the Managed Lanes and rent for the Facility Right of Way in the Segment 3C Facility Segment; and Developer allocates such amount for U.S. federal income and tax purposes between the right to toll the Managed Lanes and rent for Facility Right of Way based on the relative fair market values of such rights as of the Segment 3C Financial Closing Date, which Developer has determined are 95.42 percent and 4.58 percent respectively.

4.6 Segment 3C Public Funds Amount

Subject to Section 8.1.2, if the adjustments under Sections 4.3, 4.9 and 8.1.3 result in a Segment 3C Public Funds Amount, then TxDOT shall owe the Segment 3C Public Funds Amount to Developer in accordance with Part D of Exhibit 7 to the Agreement.

4.7 TIFIA Financing Terms Theoretical Adjustment

Unless Developer has elected the PABs-Only Option (in which case this Section 4.7 shall not apply), Developer shall prepare and deliver to TxDOT, for its approval, a financial model that updates the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option (the “TIFIA Terms Adjustment Model”) to determine the lowest value of a theoretical additional public subsidy that would be necessary for the Equity IRR to equal the Equity IRR in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option due only to certain changes in the Assumed TIFIA Financial Terms (“TIFIA Financing Terms Theoretical Adjustment”). For the purpose of calculating the TIFIA Financing Terms Theoretical Adjustment (if applicable), the following terms and procedures shall apply.

4.7.1 Developer shall deliver the TIFIA Terms Adjustment Model to TxDOT on the date on which the TIFIA loan terms are determined and not expected to differ from those to be included in the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt, which date shall not be later than the earlier of (a) ten Business Days before the scheduled Segment 3C Commercial Closing Date or (b) 15 Business Days before the Segment 3C Financial Closing Deadline.

4.7.2 Except as provided in Sections 4.7.3, 4.7.4, 4.7.5 and 4.7.6, the TIFIA Terms Adjustment Model shall update the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option with the Actual TIFIA Financial Terms.

4.7.3 The TIFIA Terms Adjustment Model shall hold constant the interest rates on the TIFIA loan, PABs and Refinancings as set forth in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option.

4.7.4 Except to the extent provided in Sections 4.7.5 and 4.7.6, the TIFIA Terms Adjustment Model shall hold constant all variables and assumptions with respect to other sources of Developer financing assumed in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option, including equity, PABs financing, any refinancing facilities and other debt facilities.

4.7.5 If the Actual TIFIA Financial Terms result in a change to the Refinancings contemplated in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option, the TIFIA Terms Adjustment Model shall restructure the Refinancings contemplated in the Benchmark Base Case Financial Model Update to minimize the impact of the Actual TIFIA Financial Terms, including at the minimum:

(a) Structuring Refinancings to the earliest time period possible under the Actual TIFIA Financial Terms; and

(b) To the extent possible under the Actual TIFIA Financial Terms and the senior debt terms included in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option, the outstanding Facility Debt in each semi-annual period under the TIFIA Terms Adjustment Model shall be equal to or greater than that for the corresponding semi-annual period prior to incorporating the Actual TIFIA Financial Terms.

4.7.6 If the Actual TIFIA Financial Terms require a change in the TIFIA repayment profile, the TIFIA Terms Adjustment Model shall update the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option such that to the extent possible under the Actual TIFIA Financial Terms and the senior debt terms in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option, the outstanding Facility Debt in each semi-annual period under the TIFIA Terms Adjustment Model shall be equal to or greater than that for the corresponding semi-annual period prior to incorporating the Actual TIFIA Financial Terms.

4.8 Changes in Initial Scope

4.8.1 TxDOT shall have the right to issue a Directive Letter and/or Change Order to advance the construction of one or more elements of the 3C Ultimate Capacity Improvements.

4.8.2 TxDOT shall have the right to issue such a Directive Letter or Change Order prior to the Segment 3C Financial Closing, provided that to the extent it includes elements of the 3C Ultimate Capacity Improvements it shall be contingent on achieving the Segment 3C Financial Closing.

4.8.3 If TxDOT issues such a Directive Letter or Change Order prior to the Segment 3C Financial Closing, then the fixed price to be paid by TxDOT for such element or elements of the 3C Ultimate Capacity Improvements (a) shall be treated separately from and not factored into the calculation of the Segment 3C TxDOT Credit or Segment 3C Public Funds Amount, and (b) shall not be taken into consideration in determining whether the conditions precedent set forth in Sections 3.1.2(s) and 3.2.2(c) are satisfied.

4.9 Segment 3C Refinancing Gain

4.9.1 This Section 4.9 shall apply only if Developer elects the PABs/TIFIA Option in accordance with Section 5.2.

4.9.2 Developer and TxDOT shall adjust the applicable Benchmark Base Case Financial Model Update and calculate TxDOT's share of Segment 3C Refinancing Gain (if any) by following the steps, in order, set forth below.

(a) First, there shall be inputted into the applicable Benchmark Base Case Financial Model Update (prior to or without giving effect to any other adjustments or inputs contemplated by this Section 4) (i) any increase in the aggregate notional principal amount of the PABs actually obtained at Segment 3C Financial Closing, as applicable, and (ii) if applicable, any increase in the aggregate principal amount of the TIFIA loan commitment actually obtained at Segment 3C Financial Closing in excess of any increase therein due to any net increase in Allowable Third-Party Costs from the respective amount thereof assumed in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option. "Allowable Third-Party Costs" shall consist of (A) the contract price under the Design-Build Contract in respect of the Segment 3C Facility Segment, provided that such contract price as indicated in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option shall not increase by more than the inflation factor (if any) as calculated by the ratio of the Consumer Price Index, for all Urban Consumers (CPI-U), for the Dallas-Fort Worth-Arlington Metropolitan Area, All Items (Not Seasonally Adjusted), most recently published by the Bureau of Labor Statistics prior to the Segment 3C Financial Closing Date to the same consumer price index most recently published prior to April 1, 2018, and (B) costs that are owing to third parties other than Affiliates incurred prior to or in connection with Segment 3C Financial Closing; and shall exclude any increase in the amount shown in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option of any development fee payable to Developer's equity members or shareholders or other Affiliates, or any increase in costs of third parties that are Affiliates of Developer, except the Design-Build Contractor. Any net increase in Allowable Third-Party Costs shall take into account both increases and decreases in Allowable Third-Party Costs compared to the amounts thereof indicated in the Benchmark Base Case Financial Model Update for the PABs/TIFIA Option. This model shall be run, adjusting accordingly the originally contemplated sources of financing and reducing the equity capital contribution commitment obligations from the amount thereof, in each case from that assumed in the applicable Benchmark Base Case Financial Model Update. The resulting financial model is referred to as "Benchmark Base Case FMU-1" and its Equity IRR will be the "Theoretical Equity IRR".

(b) Second, there shall be calculated an amount in U.S. Dollars, that if paid by Developer on the Segment 3C Financial Closing Date and inputted into the Benchmark Base Case FMU-1, would reduce the Theoretical Equity IRR to the Equity IRR reflected in the applicable Benchmark Base Case Financial Model Update, which amount is referred to as "AA-1".

(c) Third, there shall be inputted into the applicable Benchmark Base Case Financial Model Update the terms of any refunding of existing Facility Debt in connection with or as part of the Segment 3C Initial Facility Debt, applying the procedures for calculating Refinancing Gain set forth in the definition of that term in the Agreement.

(d) TxDOT's share of Segment 3C Refinancing Gain shall be an amount equal to 50% of AA-1 plus, if a positive number, 50% of the amount determined under

clause (c) above.

4.9.3 TxDOT's share of the Segment 3C Refinancing Gain, if any, shall be applied as an offset to the Segment 3C Public Funds Amount (if any) payable by Developer at Segment 3C Financial Closing, and any amount in excess thereof (or if there is no Segment 3C Public Funds Amount) shall be added to the Segment 3C TxDOT Credit otherwise applicable hereunder. After the Segment 3C Financial Closing, TxDOT's share of the Segment 3C Refinancing Gain (if any) and the resulting Segment 3C Public Funds Amount or Segment 3C TxDOT Credit, as applicable, shall be finally adjusted upon reconciliation of the Allowable Third-Party Costs as provided below:

(a) Developer shall deliver to TxDOT thorough documentation, including invoices and receipts and a certification in form reasonably required by TxDOT, of the Allowable Third-Party Costs within 30 days after the Segment 3C Financial Closing Date. TxDOT may reasonably request supplemental documentation. The Parties shall use diligent efforts to expeditiously reconcile the calculation of the net increase, if any, in Allowable Third-Party Costs and the increase in the principal amount of the TIFIA loan commitment as a result thereof.

(b) The Parties shall adjust the amount determined on the Segment 3C Financial Closing Date of TxDOT's share of Segment 3C Refinancing Gain and the Segment 3C TxDOT Credit or the Segment 3C Public Funds Amount, as applicable, promptly after final determination of the Allowable Third-Party Costs. At such time, the Parties also shall adjust the Base Case Financial Model Update (3C) to reflect the final amount of Segment 3C Refinancing Gain and TxDOT's share thereof. If, as a consequence of such adjustment, the Segment 3C TxDOT Credit determined as of the Segment 3C Financial Closing Date becomes a Segment 3C Public Funds Amount, or vice versa, then the Parties shall amend the Agreement to remove moot provisions and add the applicable substitute provisions from the form of the Agreement attached as Attachment A to this Change Order Agreement.

4.9.4 The provisions of this Section 4.9 and the provisions in Section 5.3.2 of the Agreement for determining Segment 3C Refinancing Gain related to incurrence of the Segment 3C Initial Facility Debt shall exclusively govern such determination and supersede any inconsistent provisions in the Agreement or other FA Documents.

5. Covenants

TxDOT and Developer agree to the following covenants and obligations in connection with the Segment 3C Change Order.

5.1 Developer shall use diligent efforts to obtain and close capital financing for the Segment 3C Facility Segment in a total amount sufficient to cover all capital and development costs pertaining to the Segment 3C Facility Segment shown in the Base Case Financial Model Update (3C) and Segment 3C Plan of Finance and to cover future costs of the Segment 3C TxDOT Credit (if any), except for ROW acquisition costs that TxDOT will fund as provided in Section 7.4.7.1(b) of Attachment A, and the Segment 3C Public Funds Amount (if any). Developer's sources of such capital financing are anticipated to consist of:

5.1.1 Senior priority PABs financing;

5.1.2 Unless Developer has elected the PABs-Only Option in accordance with Section 5.2, a subordinate TIFIA loan; and

5.1.3 Equity capital contributions.

5.2 At any time during the 60 day period immediately following the COA Effective Date (such period, the "Election Period"), Developer shall be entitled, at its sole option, elected through delivery of written notice thereof to TxDOT, to exclude from its sources of capital financing for the Segment 3C Facility Segment the use of a subordinate TIFIA loan (the "PABs-Only Option"). If Developer exercises such PABs-Only Option, then all provisions set forth herein related to TIFIA loan financing shall be deemed inapplicable and any related adjustments shall be ignored and deemed inapplicable for all purposes. In addition, for the duration of the Election Period, all requirements set forth herein, and related obligations of Developer, to pursue TIFIA loan financing shall be deemed automatically suspended; provided that such suspension shall in no manner be deemed or construed to extend any deadlines or prejudice Developer's rights to concurrently work toward pursuing any potential TIFIA loan financing, and TxDOT shall continue to carry out its obligations set forth in Section 5.7 during the Election Period and thereafter, unless Developer shall have affirmatively elected the PABs-Only Option in accordance with the above. For the avoidance of doubt, if Developer has not affirmatively elected the PABs-Only Option within the Election Period in accordance with the foregoing, then it shall be deemed to have elected to include within its contemplated sources of capital financing for the Segment 3C Facility Segment the use of a subordinate TIFIA loan (the "PABs/TIFIA Option"), and all requirements related thereto set forth herein shall apply.

5.3 The Parties shall use diligent efforts to reach and satisfy the conditions precedent to the Segment 3C Commercial Closing and Segment 3C Financial Closing by the applicable deadlines therefor. So long as the relevant Party has exercised diligent efforts, the failure to meet any such deadline shall not be deemed to be a failure by such Party to exercise diligent efforts. The Parties' diligent efforts shall include making reasonable modifications to this Change Order Agreement, including its Attachments, as necessary and appropriate to obtain approval from the FHWA solely in its capacity as provider of federal-aid funds. Developer shall use diligent efforts to close the Segment 3C Initial Facility Debt from the sources set forth in Section 5.1 and on the terms contemplated in the Segment 3C Plan of Finance and included in the applicable Benchmark Base Case Financial Model Update. Developer's diligent efforts shall include making reasonable financial and commercial concessions as necessary and appropriate under the circumstances, including in order to obtain consents to the Segment 3C Initial Facility Debt from Developer's existing Lenders. Developer's diligent efforts also shall include negotiating for provisions in the TIFIA loan documents clarifying that a TIFIA loan mandatory prepayment will not be triggered by any Developer borrowings to fund reimbursements to TxDOT of prior TxDOT progress payments to Developer for design and construction of the 3C Ultimate Capacity Improvement in the event TxDOT requires Service Commencement for the 3C Ultimate Capacity Improvement prior to January 1, 2040; provided that, if such diligent efforts fail to achieve the same, such failure shall not constitute a default by either Party of its obligations under this sentence. For the avoidance of doubt, failure of the Texas Transportation Commission to consider or approve issuance of the PABs and loan of the proceeds thereof, or failure of the Bond Review Board or PABs Issuer to consider or take any action needed for PABs issuance, shall not constitute a default by either Party of its obligation to exercise diligent efforts.

5.4 Developer shall cause the Segment 3C Initial Facility Debt to comply with all the terms and conditions set forth in Section 4.3 of the Agreement.

5.5 If there has been a deemed election of the PABs/TIFIA Option in accordance with Section 5.2, then Developer shall be solely responsible for all work and efforts to prepare the TIFIA letter of interest and application and related information and materials; and both the TIFIA letter of interest and TIFIA application shall identify Developer as the sole borrower. In such case, TxDOT shall have the right to participate in negotiation of the TIFIA loan; and Developer shall keep TxDOT informed in a timely manner in advance of scheduled meetings, conference calls and other discussions with the Build America Bureau concerning the TIFIA loan. In the event of election of the PABs/TIFIA Option in accordance with Section 5.2, Developer shall be solely responsible to otherwise pursue the TIFIA financing, except as provided in Section 5.7.

5.6 If there has been an election of the PABs-Only Option in accordance with Section 5.2, then Developer shall be solely responsible for all work and efforts to obtain whatever consent, if any, is required under the terms of the existing TIFIA loan from the Build America Bureau to the Segment 3C Initial Facility Debt, Segment 3C Funding Agreements and any modifications to the Initial Security Documents. TxDOT shall have the right to participate in all discussions and negotiations with the Build America Bureau regarding (a) terms and conditions for obtaining such consent (if any) or (b) provisions in the TIFIA loan documents clarifying that a TIFIA loan mandatory prepayment will not be triggered by any Developer borrowings to fund reimbursements to TxDOT of prior TxDOT progress payments to Developer for design and construction of the 3C Ultimate Capacity Improvement in the event TxDOT requires Service Commencement for the 3C Ultimate Capacity Improvement prior to January 1, 2040. Developer shall keep TxDOT informed in a timely manner in advance of scheduled meetings, conference calls and other discussions with the Build America Bureau concerning the same; provided that Developer shall not be required to involve TxDOT in any meetings, conference calls and other discussions concerning the threshold issue of whether consent from the Build America Bureau is required.

5.7 During the TIFIA creditworthiness review stage for the Segment 3C Facility Segment (including during the Election Period and unless and until such time as Developer shall have elected the PABs-Only Option in accordance with Section 5.2), TxDOT shall furnish to Developer supporting documentation for an estimated \$123.2 million of TIFIA eligible costs previously incurred by TxDOT relating to the Segment 3C Facility Segment, Downtown Connectors and I-30 Connector. In addition, in connection with PABs or TIFIA loan financing, TxDOT shall furnish, if requested, (a) factual information requested by the Build America Bureau then known and available to TxDOT concerning TxDOT or the PABs Issuer, and (b) all consents, certifications and instruments required by Section 20.9 of the 2013 Agreement.

5.8 Subject to approval of the Segment 3C PABs Agreement by the PABs Issuer's board, TxDOT, Developer and the PABs Issuer will promptly enter into a Segment 3C PABs Agreement substantially in the form of Attachment E to this Change Order Agreement. Developer shall be solely responsible for all other work and efforts to obtain a PABs allocation.

5.9 TxDOT and Developer agree that the terms enumerated in Sections 12.1.2.3 and 14.1.5 of the 2013 Agreement for adding the Segment 3C Facility Segment to the scope of Work shall be those set forth in Attachment A to this Change Order Agreement. Attachment A includes, as Exhibit 10 thereof, a revised Preliminary Baseline Schedule that incorporates a mutually approved schedule for the Segment 3C Facility Segment. Accordingly, notwithstanding Sections 12.1.2.3 and 14.1.4 of the 2013 Agreement, the Parties will not engage the Independent Engineer to provide analysis and recommendations.

5.10 The Parties shall continue to follow the procedures for processing the Request for Change Proposal for the Segment 3C Facility Segment set forth in Sections 14.1.2 and 14.1.3 of the 2013 Agreement. The Parties waive application of Sections 14.1.4, 14.1.6 and 14.3.1 of the 2013 Agreement to the Request for Change Proposal for the Segment 3C Facility Segment. For the avoidance of doubt, Section 6.3.7 of the 2013 Agreement does not apply to this Change Order Agreement or the deliverables hereunder.

5.11 Not later than the COA Effective Date, Developer shall deliver to TxDOT a model audit opinion obtained from the independent model auditor set forth in Exhibit 2 to the 2013 Agreement regarding the Benchmark Base Case Financial Model Update. If Developer elects the PABs-Only Option, then concurrently with delivery to TxDOT of the Benchmark Base Case Financial Model Update #2, Developer shall deliver to TxDOT an update of such audit and opinion as provided in Section 5.2.4 of the 2013 Agreement from the independent model auditor set forth in Exhibit 2 to the Agreement. Not later than two Business Days after the Segment 3C Financial Closing Date, Developer shall deliver to TxDOT an update of such audit and opinion for the Base Case Financial Model Update (3C) as provided in Section 5.2.4 of the Agreement, obtained from the independent model auditor set forth in Exhibit 2 to the Agreement. The audit and opinion and update thereof shall (a) be co-addressed to TxDOT, and (b) expressly identify TxDOT as an entity entitled to rely thereon. Each updated audit and opinion shall verify that the subject financial model conforms to the requirements of the 2013 Agreement or the Agreement, as applicable, and this Change Order Agreement and is free of calculation errors.

5.12 If the Parties enter into any amendment of the 2013 Agreement or the Technical Provisions between the COA Effective Date and the Segment 3C Commercial Closing Date, then prior to the Segment 3C Commercial Closing Date the Parties shall revise Attachments A and B to this Change Order Agreement to incorporate therein such amendments.

5.13 Prior to the Segment 3C Commercial Closing Date, the Parties shall diligently cooperate with each other to (a) obtain the consent of NTTA to an amendment of its NTTA Tolling Services Agreement with TxDOT to add the Segment 3C Facility Segment on substantially the same terms and provisions as set forth in such NTTA Tolling Services Agreement, and (b) prepare an amendment to the TxDOT Tolling Services Agreement between TxDOT and Developer consistent with the amendment to the NTTA Tolling Services Agreement. TxDOT makes no warranty or representation that NTTA is willing, ready or able to add the Segment 3C Facility Segment to the NTTA Tolling Services Agreement, or that NTTA will agree to the same terms and provisions as apply to the Segment 3A Facility Segment and Segment 3B Facility Segment.

5.14 Prior to the Segment 3C Commercial Closing Date, the Parties shall prepare a mutually approved amendment to the Facility Trust Agreement and Facility Trust and Security Instruments (if any), if necessary to incorporate the Segment 3C Facility Segment, and Developer shall use diligent efforts to obtain the trustee's assent to the proposed amendment to the Facility Trust Agreement, if applicable.

5.15 Upon TxDOT's receipt, not later than 15 Business Days before the scheduled Segment 3C Financial Closing Date, of written request from the Collateral Agent for the Segment 3C Initial Facility Debt, TxDOT shall enter into and deliver on the Segment 3C Financial Closing Date a direct agreement with the Collateral Agent setting forth the precise provisions of Article 20 of the 2013 Agreement (or any relevant modifications to the existing direct agreement that are consistent with Article 20 of the Agreement). Any direct agreement shall be in the form set forth in Exhibit 25 to the Agreement or in the form of an amendment,

reasonably acceptable to TxDOT, to the existing direct agreement as necessary to add the Segment 3C Initial Facility Debt.

5.16 The Segment 3C Financial Closing Deadline may be extended by mutual written consent of TxDOT and Developer. Such consent shall not be unreasonably withheld, conditioned or delayed; provided that either Party in its sole discretion may withhold consent to extension of the Segment 3C Financial Closing Deadline to a date that is beyond 90 days after the date that is six months following the COA Effective Date.

5.17 Developer shall cause its equity members to do the following on the Segment 3C Financial Closing Date:

5.17.1 Execute and deliver to TxDOT a binding agreement for the benefit of and in form and substance approved by TxDOT, providing, among other things, as follows:

(a) The obligation of such equity members to pay to TxDOT, without offset or deduction, within 15 days after an Early Termination Date, the unused portion of the Segment 3C TxDOT Credit as of the Early Termination Date, where the measure of the Termination Compensation is pursuant to Section B.3 of Exhibit 20 to the Agreement and is based on the Senior Debt Termination Amount, or the measure of the Termination Compensation is pursuant to Section B.4, C.2, D.2(c), E.1 or E.2 of Exhibit 20 to the Agreement;

(b) The obligation of such equity members to pay to TxDOT, without offset or deduction, within 15 days after an Early Termination Date, 80% of the unused portion of the Segment 3C TxDOT Credit as of the Early Termination Date, where the measure of the Termination Compensation is pursuant to Section D.2(a), D.2(b), D.3(a) or D.3(b) of Exhibit 20 to the Agreement;

(c) TxDOT's unfettered right to draw on letters of credit supplied by such equity members pursuant to Section 5.17.2, without prior notice or interference, in order to collect the applicable amount due from the equity members to TxDOT upon early termination of the Agreement; and

(d) Other terms regarding the letters of credit comparable to those set forth in Sections 16.3.1.2, 16.3.1.3, 16.3.1.4 and 16.3.1.5 of the Agreement.

5.17.2 Deliver to TxDOT unconditional standby letters of credit, which:

(a) Have an expiration date no earlier than one year from the Segment 3C Financial Closing Date;

(b) In the aggregate initially equal 104% of the amount of the Segment 3C TxDOT Credit determined as of the Segment 3C Financial Closing Date;

(c) May provide for automatic reductions in the aggregate amount of the letters of credit equal to the amount of each debit from the Segment 3C TxDOT Credit approved by TxDOT in writing; and

(d) Otherwise comply with the requirements for letters of credit set forth in Section 16.3.1.1 of the Agreement.

5.18 TxDOT and Developer agree and acknowledge that the Downtown Connectors and I-30 Connector are not part of the Segment 3C Facility Segment and not included in the scope of this Change Order Agreement, and shall be added to the Facility and Agreement by separate and distinct Change Orders for each of these improvements, provided that:

5.18.1 The Segment 3C Plan of Finance shall include the eligible costs of the Downtown Connectors and I-30 Connector for purposes of applying for TIFIA loan financing (if so elected) and PABs financing under this Change Order Agreement;

5.18.2 Each Benchmark Base Case Financial Model Update and the Interim Segment 3C TxDOT Credit incorporate assumptions for the cost and revenue impacts of the Downtown Connectors and I-30 Connector and TxDOT's payment of \$55,187,353 in the aggregate for the Downtown Connectors and I-30 Connector; and

5.18.3 If the Segment 3C Financial Closing is not achieved for any reason, the cost and revenue impacts of the Downtown Connectors and I-30 Connector will be determined according to the provisions of the Directive Letters and Change Order(s) previously issued therefor and the applicable provisions of the 2013 Agreement, without regard to assumptions therefor in either Benchmark Base Case Financial Model Update, and nothing in either Benchmark Base Case Financial Model Update, this Change Order Agreement, agreements and documents rescinded pursuant to Section 9 (if any), or any other document or communication, written or oral (except such Directive Letters and Change Order(s)), relating to the Segment 3C Facility Segment shall constitute an admission by either Party, or prejudice either Party, respecting such cost and revenue impacts.

5.19 If any legal proceeding is brought by a third party claiming that TxDOT lacks authority to enter into this Change Order Agreement or to issue the Segment 3C Change Order, or that this Change Order Agreement or the Segment 3C Change Order is invalid or unenforceable, then Developer at its expense shall cooperate in TxDOT's defense against such claims.

6. Closing Procedures and Document Delivery

6.1 Developer shall provide written notice to TxDOT as early as possible before the Segment 3C Financial Closing Deadline of the scheduled date for the Segment 3C Financial Closing. The notice must also set forth the date scheduled for the Segment 3C Commercial Closing and pricing of the PABs or any other debt securities, and such notice must be provided at least 20 Business Days before the date scheduled for the Segment 3C Commercial Closing and pricing of the PABs or such other debt securities. If the scheduled date(s) change after Developer has provided to TxDOT the written notice contemplated in this Section 6.1, Developer shall promptly provide TxDOT with written notice of the new date(s), which cannot be any earlier than the date(s) set forth in the original notice.

6.2 Unless this Change Order Agreement is sooner terminated, when all conditions precedent to the Segment 3C Commercial Closing set forth in Section 3.1 have been satisfied or waived in writing, the Parties shall proceed with the Segment 3C Commercial Closing by taking the actions set forth in this Section 6.2.

6.2.1 The Parties shall revise the Amended and Restated Agreement attached hereto as Attachment A to the extent, if any, described in Section 5.12, and then shall complete it as follows:

(a) Attach the then, TxDOT-approved Segment 3C Plan of Finance as part of Exhibit 5, except the confidential portions to be deposited with the Escrow Agent under the Intellectual Property Escrow Agreement pursuant to Section 4.1.2 of the 2013 Agreement;

(b) Supplement Exhibit 6 to the Agreement to include in Part B thereof the Segment 3C Initial Funding Agreements and any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt;

(c) If there is then a Segment 3C TxDOT Credit, (i) insert the amount of the Segment 3C TxDOT Credit in Exhibit 7, Part D, Section 1.1 of the Agreement, (ii) remove all brackets around provisions pertaining to the Segment 3C TxDOT Credit in the Agreement and its Exhibits, including around the definition of such term in Exhibit 1 to the Agreement, and (iii) delete all provisions pertaining to a Segment 3C Public Funds Amount in the Agreement and its Exhibits, including the definition of such term in Exhibit 1 to the Agreement, and in Book 2;

(d) If there is then a Segment 3C Public Funds Amount, (i) insert the Segment 3C Public Funds Amount in Exhibit 7, Part D, Section 1.1 of the Agreement, (ii) remove all brackets around provisions pertaining to the Segment 3C Public Funds Amount in the Agreement and its Exhibits, including around the definition of such term in Exhibit 1 to the Agreement, and in Book 2, and (iii) delete all provisions pertaining to a Segment 3C TxDOT Credit in the Agreement and its Exhibits, including the definition of such term in Exhibit 1 to the Agreement, and in Book 2;

(e) If both the Segment 3C TxDOT Credit and the Segment 3C Public Funds Amount equal zero, delete all provisions pertaining thereto in the Agreement and its Exhibits, including the definitions of such terms in Exhibit 1 to the Agreement, and in Book 2;

(f) Complete the then agreed revised Bands in Attachment 1 to Exhibit 7 to the Agreement, to be calculated consistently with the methodology used for calculating the Bands for the Segment 3A Facility Segment and Segment 3B Facility Segment;

(g) Insert as Attachment 3-1 to Exhibit 8 to the Agreement the most recent prevailing wage decision published prior to the Segment 3C Commercial Closing Date;

(h) If there is any mutually approved modification to the Preliminary Baseline Schedule, attach the same as Exhibit 10 to the Agreement;

(i) Update Exhibit 32 to the Agreement as necessary to include changes and additions to Reference Information Documents respecting the Segment 3C Facility Segment; and

(j) Complete any other blanks with the relevant information or provisions, and make such other revisions as may have been mutually agreed between the Parties between the COA Effective Date and the Segment 3C Commercial Closing Date.

6.2.2 After completing the Agreement and Book 2, the Parties shall sign and deliver to TxDOT the number of counterpart originals it reasonably requests, and to Developer the number of counterpart originals it reasonably requests, of the Agreement and Book 2.

6.2.3 The Parties shall revise the Technical Provisions attached hereto as Attachment B to the extent, if any, described in Section 5.12, and then deliver to each Party one complete hard copy and one electronic copy of Attachment B as so revised.

6.2.4 TxDOT shall sign and issue to Developer the Segment 3C Change Order in the form attached as Attachment C.

6.2.5 The Parties shall sign and deliver to TxDOT the number of counterpart originals it reasonably requests, and to Developer the number of counterpart originals it reasonably requests, of the amendment to the TxDOT Tolling Services Agreement.

6.2.6 TxDOT shall sign and deliver to NTTA a counterpart of the amendment to the NTTA Tolling Services Agreement, signed by NTTA, and shall deliver a copy thereof to Developer.

6.2.7 The Parties shall sign and deliver to the Independent Engineer, and obtain the Independent Engineer's signature for, the amendment or supplement to the Joint Work Authorization to add the Segment 3C Facility Segment to the scope of the Independent Engineer's work.

6.2.8 The Parties shall execute (but not date) and deliver to the escrow agent for safekeeping under the Lease Escrow Agreement two counterparts of an Amendment to Lease, substantially in the form of Exhibit 3 to the 2013 Agreement, and one Amendment to Memorandum of Lease, substantially in the form of Exhibit 3 to the 2013 Agreement.

6.2.9 Developer shall deliver to TxDOT the name, address, phone number and authorized representative of each Contractor under any new Contracts, as required by Section 10.1.2 of the Agreement.

6.2.10 TxDOT shall deliver the opinions of its legal counsel to Developer and the Lenders for the Segment 3C Facility Debt, and Developer shall deliver the opinions of its legal counsel to TxDOT.

6.2.11 Developer shall deliver to TxDOT true and complete copies of current documentation and evidence of ownership of Developer and upstream entities whose sole or primary business interest, direct or indirect, involves the Facility, including relevant LLC agreements and other governing documents, and of legal authority of Developer to execute and deliver the applicable transaction documents.

6.2.12 The Parties shall confirm in writing their approval of the Commercial Closing Base Case Financial Model Update (3C).

6.2.13 Developer shall complete, sign, notarize and file with the Texas Ethics Commission a Certificate of Interested Parties (Form 1295), which can be found at <https://www.ethics.state.tx.us/forms/1295.pdf>. Filing must be done on-line at www.ethics.state.tx.us/File.

6.2.14 Developer shall concurrently obtain committed pricing for the PABs.

6.2.15 The Parties shall take such other actions and execute such further documents as may be reasonably necessary or incidental to closing the transaction between them contemplated by this Change Order Agreement.

6.3 On the Segment 3C Financial Closing Date, the Parties shall take the actions set forth in this Section 6.3.

6.3.1 If and to the extent necessary to document any changes to the following provisions of the Agreement and its Exhibits, the Parties shall:

(a) Complete, initial and substitute the final TxDOT-approved Segment 3C Plan of Finance as part of Exhibit 5 to the Agreement, except the confidential portions to be deposited with the Escrow Agent under the Intellectual Property Escrow Agreement pursuant to Section 4.1.2 of the 2013 Agreement;

(b) If there is then a Segment 3C TxDOT Credit, (i) complete, initial and substitute Exhibit 7 of the Agreement setting forth the final Segment 3C TxDOT Credit in Part D, Section 1.1 of Exhibit 7, (ii) remove all brackets around provisions pertaining to the Segment 3C TxDOT Credit in the Agreement and its Exhibits, including around the definition of such term in Exhibit 1 to the Agreement (or, if applicable, restore the bracketed provisions in the Agreement and its Exhibits), and (iii) if applicable, delete all provisions pertaining to a Segment 3C Public Funds Amount in the Agreement and its Exhibits, including the definition of such term in Exhibit 1 to the Agreement, and in Book 2;

(c) If there is a final Segment 3C Public Funds Amount, (i) complete, initial and substitute Exhibit 7 of the Agreement setting forth the final Segment 3C Public Funds Amount in Part D, Section 1.1 of Exhibit 7, (ii) remove all brackets around provisions pertaining to the Segment 3C Public Funds Amount in the Agreement and its Exhibits, including around the definition of such term in Exhibit 1 to the Agreement, and in Book 2 (or, if applicable, restore the bracketed provisions in Attachment A hereto), and (iii) if applicable, delete all provisions pertaining to a Segment 3C TxDOT Credit in the Agreement and its Exhibits, including the definition of such term in Exhibit 1 to the Agreement, and in Book 2;

(d) If both the final Segment 3C TxDOT Credit and the Segment 3C Public Funds Amount are zero, delete all provisions pertaining thereto in the Agreement and its Exhibits, including the definitions of such terms in Exhibit 1 to the Agreement, and in Book 2; and

(e) Complete the final agreed revised Bands in Attachment 1 to Exhibit 7 to the Agreement, to be calculated consistently with the methodology used for calculating the Bands for the Segment 3A Facility Segment and Segment 3B Facility Segment.

6.3.2 After completing the substitute provisions of the Agreement and its Exhibits and Book 2, if any, the Parties shall initial and deliver to TxDOT the number of counterpart originals it reasonably requests, and to Developer the number of counterpart originals it reasonably requests, of the substitute provisions of the Agreement and its Exhibits and Book 2.

6.3.3 Developer shall take all actions necessary or incidental to achieving the consummation of the loans of the Segment 3C Initial Facility Debt, including (a) the execution and delivery by all applicable parties of all required Segment 3C Initial Funding Agreements and

any amendments to the Initial Security Documents in connection with the incurrence of the Segment 3C Initial Facility Debt and (b) the funding or commitment of all equity contributions required by the Lenders of the Segment 3C Initial Facility Debt.

6.3.4 Developer shall deliver to TxDOT the number of counterpart originals it reasonably requests of the agreement of Developer's equity members as required by Section 5.17, and the original letters of credit as required by Section 5.17.

6.3.5 TxDOT shall enter into and deliver a new direct agreement (or an amendment to the existing direct agreement) with the Collateral Agent if and as required under Section 5.15.

7. NTP1 (3C)

7.1 TxDOT will issue NTP1 (3C) within ten Business Days after the later of (a) the COA Effective Date and (b) the date Developer (i) obtains and places in full force and effect all applicable Insurance Policies, in form and content required by Section 16.1 of the Agreement, required to be obtained prior to commencement of the Work authorized by NTP1 (3C) and (ii) delivers to TxDOT certificates of insurance and written evidence of insurance for all required insurance policies, in form and content required by Section 16.1.2.4(a) of the Agreement. Such Insurance Policies shall consist of Commercial General Liability, Auto Liability, Pollution Liability (only if Developer intends to undertake work described in Section 7.1.4 or 7.1.5 prior to NTP2 (3C)), Professional Liability (only if professional services will be rendered respecting design of the Segment 3C Facility Segment prior to Segment 3C Financial Closing), Worker's Compensation, Employer's Liability, Railroad Protective Liability (only if Developer intends to perform Work across, under or adjacent to railroad tracks or railroad right-of-way prior to Segment 3C Financial Closing), Contractors' Commercial General Liability (only if Developer intends for any Contractor to perform Work on the Site of the Segment 3C Facility Segment prior to Segment 3C Financial Closing), Contractor's Worker Compensation, and Key Contractors' and other Contractors' Auto Liability (only if Developer intends for any Contractor to perform Work on the Site of the Segment 3C Facility Segment prior to Segment 3C Financial Closing). Issuance of NTP1 (3C) authorizes Developer to do the following (but, except for the Work described in Section 7.1.7, will not obligate Developer to do the following prior to the Segment 3C Financial Closing Date):

7.1.1 Prepare and submit to TxDOT for its approval in its good faith discretion updates to the component parts, plans and documentation of the Facility Management Plan to take into account (i) the Segment 3C Facility Segment, and (ii) previously agreed provisions for satisfying FHWA's new requirements respecting quality assurance and quality management for the Segment 3C Facility Segment, which new requirements Developer acknowledges having received;

7.1.2 Perform the Work required to achieve the conditions to the commencement of Design Work for the Segment 3C Facility Segment set forth in clauses (a) through (f) below, and after achievement of the following conditions, to commence Design Work for the Segment 3C Facility Segment, subject to the limitation on Design Work set forth in Section 7.1.7;

(a) Submittal by Developer to TxDOT and approval by TxDOT, in accordance with Section 9.1 of the 2013 Agreement and Section 2 of the Technical Provisions, of modifications of all the component parts, plans and documentation of the Facility

Management Plan that are labeled "A" in the column titled "Required By" in Attachment 2-1 to the Technical Provisions, to take into account the Segment 3C Facility Segment;

(b) Submittal by Developer to TxDOT and approval by TxDOT of Developer's WBS and FBS-2 under Section 2.1 of the Technical Provisions for the Segment 3C Facility Segment;

(c) Submittal by Developer to TxDOT and approval by TxDOT of updates to the portions of the Comprehensive Environmental Protection Program (CEPP) related to the Work under Section 4.3 of the Technical Provisions, to take into account the Segment 3C Facility Segment;

(d) Submittal by Developer to TxDOT and approval by TxDOT of updates to the portions of the Aesthetics and Landscaping Plan related to the Work under Section 15.5 of the Technical Provisions, to take into account the Segment 3C Facility Segment;

(e) Submittal by Developer to TxDOT and approval by TxDOT of an update to the Maintenance Management Plan (MMP) under Section 19.2 of the Technical Provisions, to take into account the Segment 3C Facility Segment; and

(f) TxDOT's prompt written confirmation that all other conditions to the commencement of Design Work expressly provided in the FA Documents have been achieved as to the Segment 3C Facility Segment;

7.1.3 Take all necessary actions to satisfy the conditions precedent to issuance of NTP2 (3C) set forth in Section 7.6.1 of the Agreement;

7.1.4 Enter the Facility Right of Way that TxDOT owns for the Segment 3C Facility Segment, after coordinating with TxDOT's Area Office, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and engage in the other activities anticipated to be performed after NTP1 (3C), as the case may be, referenced in the Technical Provisions, including satisfying the conditions to issuance of NTP2 (3C);

7.1.5 Undertake Utility Adjustment Work related to the Segment 3C Facility Segment in accordance with all applicable requirements, terms and conditions set forth in the 2013 Agreement and Book 2, which are hereby incorporated herein by reference (which for this purpose include provisions on Lane Rental Charges respecting the Segment 3C Facility Segment as set forth in Exhibit 18 to the Agreement, Table 3.4-1, Sections 3.4(e)(ii) and (iii), and Table 3.4-2), provided that (a) Developer first obtains TxDOT's approval of a scope and budget with respect to such Utility Adjustment Work, (b) Developer first satisfies the additional requirements set forth in Section 7.6.2 of the 2013 Agreement, (c) Developer first negotiates and finalizes MUAAs as required by Section 6.1.4.1 of Book 2, (d) Developer first obtains all applicable Governmental Approvals required for such Utility Adjustment Work, (e) Developer first delivers to TxDOT the Payment and Performance Bonds respecting the Segment 3C Facility Segment meeting the requirements therefor under the Agreement, and (f) for construction work to be undertaken by any Utility Owner, Developer first satisfies all the conditions set forth in Section 6.4.4 of Book 2;

7.1.6 Acquire Facility ROW for the Segment 3C Facility Segment in accordance with all applicable requirements, terms and conditions set forth in the 2013 Agreement and

Book 2, which are hereby incorporated herein by reference, provided that (a) Developer first submits and obtains TxDOT's approval of a scope and budget with respect to such acquisition Work, (b) Developer first submits and obtains TxDOT's approval of an updated ROW Acquisition Plan to take into account the Segment 3C Facility Segment, and (c) Developer first obtains all applicable Governmental Approvals required for such acquisition Work. The scope and budget for such acquisition Work submitted for TxDOT's approval must include, at a minimum, a pricing and schedule breakdown for (i) the preliminary design necessary to initiate Facility ROW acquisition Work and (ii) the following items for each parcel: title services, right of entry services, surveying, surveying administrative fee, waiver valuation services, waiver parcel costs, initial appraisal services, initial appraisal review, appraisal/review administrative fee, appraisal update, appraisal update review, negotiation tasks, negotiated parcel cost, administrative settlement costs, closing services, relocation fees, relocation parcel costs, condemnation support, condemnation parcel costs, Phase 1 Hazardous Materials Investigation costs, Developer's Work-related personnel expenses, Developer's Work-related external services, and Developer's overhead and administrative costs and expenses; and

7.1.7 Pursue re-evaluation and updates under NEPA, and prepare the related necessary environmental studies and environmental documents, for the Segment 3C Facility Segment, including the wishbone ramps for Westport Parkway and the direct connectors for 820, under the direction and control of FHWA and TxDOT. Developer recognizes and acknowledges that completion of such re-evaluation and updates may be required or prudent in order to mitigate NEPA risk regarding an allocation of PABs from the USDOT. Developer shall bear all risk of related delay and cost increase, respecting (a) the scope and design of the Segment 3C Facility Segment, including respecting the Westport Parkway managed lane braided ramps, SH 170 direct connectors and reconfigured IH 820/I-35W managed lane direct connectors, and (b) any federal action to approve a PABs allocation for the Segment 3C Facility Segment. Developer shall not undertake or permit to be undertaken Design Work for such wishbone ramps and direct connectors, or any other changes to the design set forth in the Approved NEPA Schematics for the Segment 3C Facility Segment, beyond preliminary design until such re-evaluation and updates are completed and approved by FHWA.

7.2 TxDOT shall directly pay the first \$18 million of the acquisition prices, severance damages and relocation costs of parties being relocated (but not title insurance, escrow fees and transfer fees and taxes or any other costs or expenses related to such acquisitions), for all parcels of Facility Right of Way for the Facility Extension that is part of the Segment 3C Facility Segment; provided that such \$18 million shall be available to pay only for parcels of Facility Right of Way on which non-tolled portions of the Segment 3C Facility Segment will be constructed (if any). Developer shall deliver to TxDOT the documentation setting forth the amounts owing for such acquisition prices, severance damages and relocation costs as early as possible prior to closing of such acquisitions.

8. Termination

8.1 Due to Non-Satisfaction of Conditions Precedent

8.1.1 If any condition precedent is not satisfied and not waived in writing by the applicable deadline set forth in Section 3.1 or 3.2, then either Party may elect, in its sole discretion, to terminate this Change Order Agreement, provided that such failure is not due to any fault or less than diligent efforts of such Party to timely satisfy such condition precedent. Except as provided in Sections 8.1.2 and 8.1.3, the Party shall elect to terminate by delivering written notice of termination to the other Party after the deadline has passed and before the

condition precedent is satisfied or waived in writing. Such termination shall be effective and final immediately upon delivery of such written notice of election to terminate, without need for any other notice and without any cure period.

8.1.2 If the Segment 3C TxDOT Credit is less than \$30.47 million (determined before any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain), then the conditions precedent set forth in Sections 3.1.2(s) and 3.2.2(c) will not be satisfied, TxDOT shall be entitled to deliver to Developer notice of its intent not to proceed with the Segment 3C Commercial Closing or Segment 3C Financial Closing, and this Change Order Agreement shall thereby terminate automatically three Business Days after such notice is delivered without any future rights or obligations of the Parties under this Change Order Agreement (other than any payment obligations of TxDOT arising under Section 10.6.1 for ROW acquisition and Utility Adjustment costs incurred prior to the date of such termination and other than rescission as set forth in Section 9, if applicable); provided that if Developer shall deliver to TxDOT notice, within three Business Days after the delivery of such notice from TxDOT, that it elects to provide to TxDOT a Segment 3C TxDOT Credit equal to \$30.47 million (plus any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain), then the Parties shall proceed with the Segment 3C Commercial Closing or Segment 3C Financial Closing, as applicable, and TxDOT shall have a Segment 3C TxDOT Credit of \$30.47 million (plus any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain) as of such closing. If this provision applies as of the Segment 3C Commercial Closing but as of the Segment 3C Financial Closing the calculation of the Segment 3C TxDOT Credit under this Change Order Agreement exceeds \$30.47 million (determined before any increase in the Segment 3C TxDOT Credit under Section 4.9 for Segment 3C Refinancing Gain), then the Segment 3C TxDOT Credit as of the Segment 3C Financial Closing shall be the higher amount.

8.1.3 If the TIFIA Financing Terms Theoretical Adjustment exceeds \$20 million, then the condition precedent set forth in Section 3.1.2(t) will not be satisfied, Developer shall be entitled to deliver to TxDOT notice of its intent not to proceed with the Segment 3C Commercial Closing or Segment 3C Financial Closing, and this Change Order Agreement shall thereby terminate automatically three Business Days after such notice is delivered without any future rights or obligations of the Parties under this Change Order Agreement (other than any payment obligations of TxDOT arising under Section 10.6.1 for ROW acquisition and Utility Adjustment costs incurred prior to the date of such termination and other than rescission as set forth in Section 9, if applicable); provided that if TxDOT shall deliver to Developer notice, within three Business Days after the delivery of such notice from Developer, that it elects to increase the Segment 3C Public Funds Amount or decrease the Segment 3C TxDOT Credit, as applicable, by the amount of such excess, then the Parties shall proceed with the Segment 3C Commercial Closing or Segment 3C Financial Closing, as applicable, and the Segment 3C Public Funds Amount or Segment 3C TxDOT Credit, as applicable, shall be adjusted accordingly to determine the final Segment 3C Public Funds Amount or final Segment 3C TxDOT Credit, as applicable.

8.2 Due to Default under 2013 Agreement

8.2.1 TxDOT, at its sole election, shall be entitled to terminate this Change Order Agreement if, prior to the Segment 3C Commercial Closing Date or Segment 3C Financial Closing Deadline, there occurs a Developer Default under the 2013 Agreement that is the subject of a Warning Notice issued by TxDOT to Developer and such Developer Default either has no period for cure under the 2013 Agreement or is not fully and completely cured within the applicable cure period set forth in the 2013 Agreement and prior to the Segment 3C

Commercial Closing Date or Segment 3C Financial Closing Deadline, without need for any other notice and without any additional cure period. Such termination shall be effective and final immediately upon delivery of written notice following such Developer Default and, if applicable, lapse of the cure period without cure.

8.2.2 Developer, at its sole election, shall be entitled to terminate this Change Order Agreement if, prior to the Segment 3C Commercial Closing Date or Segment 3C Financial Closing Deadline, there occurs a material TxDOT Default under Section 17.5.1.1 of the 2013 Agreement that is the subject of a notice issued by Developer to TxDOT and such TxDOT Default is not fully and completely cured within the applicable cure period under Section 17.5.2 of the 2013 Agreement and prior to the Segment 3C Commercial Closing Date or Segment 3C Financial Closing Deadline, without need for any other notice and without any additional cure period. Such termination shall be effective and final immediately upon delivery of written notice following such TxDOT Default and lapse of the cure period without cure.

8.3 Due to Termination of 2013 Agreement

This Change Order Agreement shall automatically terminate if either Party for any reason delivers to the other Party written notice of termination of the 2013 Agreement.

8.4 Due to Failure to Close

8.4.1 TxDOT, at its sole election, shall be entitled to terminate this Change Order Agreement if Developer fails to proceed with the Segment 3C Commercial Closing or Segment 3C Financial Closing, including failing to take any of the actions required of it under Section 6.2, despite satisfaction or waiver of all the conditions precedent to the Segment 3C Commercial Closing or Segment 3C Financial Closing. Such termination shall be effective and final immediately upon TxDOT's delivery of written notice of election to terminate following such failure, without need for Warning Notice or any other notice and without any cure period.

8.4.2 Developer, at its sole election, shall be entitled to terminate this Change Order Agreement if TxDOT fails to proceed with the Segment 3C Commercial Closing or Segment 3C Financial Closing, including failing to take any of the actions required of it under Section 6.2, despite satisfaction or waiver of all the conditions precedent to the Segment 3C Commercial Closing or Segment 3C Financial Closing. Such termination shall be effective and final immediately upon Developer's delivery of written notice of election to terminate following such failure, without need for any other notice and without any cure period.

9. Rescission

9.1 The transaction consummated on the Segment 3C Commercial Closing Date under this Change Order Agreement, including the Agreement, Book 2 and Segment 3C Change Order, shall be deemed automatically rescinded and canceled if for any reason Developer fails to achieve the Segment 3C Financial Closing within eight Business Days after the Segment 3C Commercial Closing Date or any longer period mutually agreed to in writing by the Parties prior to expiration of such eight-Business Day period.

9.2 If rescission and cancellation occurs pursuant to this Section 9, then:

(a) The 2013 Agreement, Book 2, the TxDOT Tolling Services Agreement, and all other FA Documents as they existed immediately prior to the Segment 3C Commercial

Closing shall be automatically deemed reinstated in full, as if never amended or restated pursuant to this Change Order Agreement;

(b) The Base Case Financial Model Update as in effect immediately prior to the Segment 3C Closing Date shall be automatically deemed reinstated in full, as if no Benchmark Base Case Financial Model Update or Commercial Closing Base Case Financial Model Update (3C) ever existed;

(c) The Segment 3C Change Order shall be null and void; and

(d) No Segment 3C Initial Facility Debt shall attach to or encumber the Developer's Interest or any portion thereof or be treated as Facility Debt for any purpose under the 2013 Agreement.

9.3 The provisions of this Section 9 shall survive the Segment 3C Commercial Closing Date, notwithstanding Section 24.20 of the Agreement. Nothing in Article 19, including Section 19.9, of the Agreement shall apply to or affect rescission and cancellation pursuant to this Section 9.

10. Liquidated Damages for Certain Terminations; Reimbursement of Certain Costs; Utility Agreements

10.1 Concurrently with execution of this Change Order Agreement, Developer (or affiliates on its behalf) shall deliver, or shall have delivered, to TxDOT the Closing Security. Unless TxDOT is entitled to resort to the Closing Security, TxDOT will return it to Developer (or such affiliates), undrawn, within five Business Days after the Segment 3C Financial Closing.

10.2 Developer shall be liable for and pay to TxDOT liquidated damages equal to \$10 million (except as otherwise provided below) upon termination of this Change Order Agreement or rescission of the transaction consummated on the Segment 3C Commercial Closing Date due to:

10.2.1 Developer's failure or inability to achieve Segment 3C Financial Closing by the Segment 3C Financial Closing Deadline attributable to Developer's failure to exercise diligent efforts to timely satisfy any condition precedent the satisfaction of which requires efforts by Developer;

10.2.2 Existence of an incurable or uncured Developer Default as described in Section 8.2.1;

10.2.3 Termination of the 2013 Agreement as a result of a Developer Default thereunder; or

10.2.4 Developer's failure to close as described in Section 8.4.1.

10.3 TxDOT shall be entitled to collect the liquidated damages owing through a draw on the Closing Security or a forfeiture of the Closing Security, as applicable, after such termination, without prior notice to or demand upon Developer for such liquidated damages. Such liquidated damages shall constitute TxDOT's sole right to damages on account of the failure resulting in such termination.

10.4 Developer acknowledges that the time period TxDOT has provided to Developer to close the Segment 3C Initial Facility Debt is ample and reasonable, and that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of the lost opportunity to TxDOT represented by this Change Order Agreement. Such damages include the harm from the difficulty, and substantial additional expense, to TxDOT, to procure and deliver, operate and maintain the Segment 3C Facility Segment through other means, loss of or substantial delay in use, enjoyment and benefit of the Segment 3C Facility Segment by the general public, and injury to the credibility and reputation of TxDOT's transportation improvement program, with policy makers and with the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Segment 3C Facility Segment and the unavailability of a substitute for it.

10.5 In any circumstance where TxDOT is entitled to liquidated damages, Developer shall solely bear all costs and expenses it incurs in connection with the Segment 3C Facility Segment, including costs to perform technical and financial analysis and due diligence, to negotiate this Change Order Agreement, to seek to obtain and close the financing for the Segment 3C Facility Segment, to carry out Facility ROW acquisition services and Utility Adjustment Work for the Segment 3C Facility Segment, to perform Design Work, to perform all other Work undertaken pursuant to NTP1 (3C), and to otherwise carry out this Change Order Agreement.

10.6 If this Change Order Agreement is terminated or the transaction consummated on the Segment 3C Commercial Closing Date is rescinded for any reason that does not entitle TxDOT to liquidated damages, then:

10.6.1 TxDOT will reimburse Developer for (a) ROW acquisition prices, severance damages and relocation costs incurred by Developer prior to the date of such termination and previously approved by TxDOT with respect to parcels for the Segment 3C Facility Segment (over and above the first \$18 million of such prices, damages and costs), and (b) amounts Developer has paid or owes to Utility Owners with respect to Utility Adjustment Work previously approved by TxDOT for the Segment 3C Facility Segment and performed prior to the date of such termination, except with respect to any Utility Enhancements;

10.6.2 Developer shall solely bear all other costs and expenses it incurs in connection with the Segment 3C Facility Segment, including costs to perform technical and financial analysis and due diligence, to negotiate this Change Order Agreement, to seek to obtain and close the financing for the Segment 3C Facility Segment, to carry out Facility ROW acquisition services and Utility Adjustment Work for the Segment 3C Facility Segment, to perform Design Work, to perform all other Work undertaken pursuant to NTP1 (3C), and to otherwise carry out this Change Order Agreement; and

10.6.3 TxDOT shall solely bear all costs and expenses it incurs in connection with the Segment 3C Facility Segment, including costs to perform technical and financial analysis and due diligence, to negotiate this Change Order Agreement, and to otherwise carry out this Change Order Agreement.

10.7 If as of the date of termination or rescission Developer has entered into any contract for Utility Adjustments respecting the Segment 3C Facility Segment, TxDOT shall elect, by written notice to Developer, to continue in effect such contract or to require its termination. If TxDOT elects to continue the contract in effect, then Developer shall execute and deliver to

TxDOT a written assignment, in form and substance acceptable to TxDOT, acting reasonably, of all Developer's right, title and interest in and to the contract, and TxDOT shall assume in writing Developer's obligations thereunder that arise from and after the date of termination or rescission. If TxDOT elects to require termination of the contract, then Developer shall take actions comparable to those set forth in Section 19.5.5 of the 2013 Agreement with respect to the contract.

10.8 The provisions of this Section 10 shall survive the Segment 3C Commercial Closing and the Segment 3C Financial Closing, notwithstanding Section 24.20 of the Agreement.

11. Miscellaneous

11.1 Amendments and Waivers.

This Change Order Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns. No waiver of any term, covenant or condition of this Change Order Agreement shall be valid unless in writing and signed by the Party benefitted by the term, covenant or condition.

11.2 Successors and Assigns

This Change Order Agreement shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors, assigns and legal representatives under the 2013 Agreement.

11.3 Survival

All provisions of this Change Order Agreement which by their inherent character should survive the Segment 3C Commercial Closing, the Segment 3C Financial Closing or earlier termination of this Agreement shall survive such event.

11.4 No Third Party Beneficiaries

It is not intended by any of the provisions of this Change Order Agreement to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit pursuant to the terms or provisions hereof.

11.5 Governing Law; Jurisdiction and Venue

11.5.1 This Change Order Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

11.5.2 The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Change Order Agreement shall be the district courts of Travis County, Texas.

11.6 Notices and Communications

All notices and communications under this Change Order Agreement shall be governed by Section 24.12 of the 2013 Agreement, provided that the address for notice to TxDOT is changed to:

Benjamin Asher
Director of Project Finance, Debt and Strategic Contracts Division
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701
Telephone: (512) 463-8611
Facsimile: (512) 416-2089
E-mail: benjamin.asher@txdot.gov

11.7 Entire Agreement

This Change Order Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to such subject matter, including but not limited to the prior Term Sheet between the Parties respecting the Segment 3C Facility Segment.

11.8 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.

[Signature Page Immediately Follows]

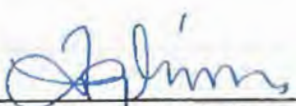
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Change Order Agreement as of the date first above written.

Developer


TxDOT

**NTE MOBILITY PARTNERS SEGMENTS 3
LLC**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: 
Name: Alberto Gonzalez Lalueza
Title: Authorized Representative

By: _____
Name: James Bass
Title: Executive Director

By: 
Name: WIS VARQUEZ
Title: DEPUTY CEO.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Change Order Agreement as of the date first above written.


Developer

TxDOT

**NTE MOBILITY PARTNERS SEGMENTS 3
LLC**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Name: Alberto Gonzalez Lalueza
Title: Authorized Representative

By:  _____
Name: James Bass
Title: Executive Director

By: _____
Name: _____
Title: _____

ATTACHMENT A

FORM OF AMENDED AND RESTATED FACILITY AGREEMENT

[to be attached]

ATTACHMENT B

FORM OF AMENDED AND RESTATED BOOK 2

[to be attached]

ATTACHMENT C

FORM OF SEGMENT 3C CHANGE ORDER

[to be attached]

ATTACHMENT D
BENCHMARK RATES
BENCHMARK PABS CREDIT SPREAD

Attachment D – Benchmark Rates - TIFIA	
SLGS	2.68%
Credit Spread	0.01%
All-in Rate	2.69%

Attachment D – Benchmark Rates – PABs (PABs/TIFIA Option)	
MMD	2.75%
Credit Spread	1.75%
All-in Rate*	4.50%

Attachment D – Benchmark Rates – PABs (PABs-Only Option)	
MMD	3.0%
Credit Spread	1.00%
All-in Rate*	4.00%

* Yield to call.

ATTACHMENT E
FORM OF SEGMENT 3C PABS AGREEMENT

[to be attached]

**Texas Department of Transportation
Texas Turnpike Authority
TECHNICAL PROVISIONS for
Amended and Restated Facility Agreement
BOOK 2**

**North Tarrant Express Project
Segments 3A, 3B and 3C Facility**

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PREFACE

TxDOT's *Programmatic Comprehensive Development Agreement Book 3* (for Concession Projects), dated 12/05/07, as amended by the provisions noted herein, will be applicable to the FA referred to herein below.

Unless otherwise noted in the FA, the term "Project" as referenced in Book 3 shall mean "Facility".

Unless otherwise noted in the FA, items referred to as being submitted with the Proposal will have been submitted as of the Effective Date or Amendment Effective Date, as applicable.

Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed thereto in the FA.

1 GENERAL

Incorporate Sections 1.1, 1.2, 1.3, and 1.4 as follows:

1.1 Project Scope

The North Tarrant Express (NTE) Project is being developed to include the Facility that is the subject of the Amended and Restated Facility Agreement (FA) of which this Book 2 forms a part.

The objectives of developing the Facility are to introduce Highway improvements that will relieve traffic congestion, improve local and regional mobility, promote economic activity and reduce levels of environmental pollution.

This Facility comprises the IH 35W corridor from just south of Eagle Parkway to and including the IH 35W/IH 820 interchange and then south of this interchange along the IH 35W corridor to and including Luella Street in the City of Fort Worth, Texas.

1.1.1 Mandatory Scope; Initial Mandatory Scope

At a minimum, Developer is required to (1) design, construct, operate and maintain the Segment 3A Facility Segment, the Segment 3C Facility Segment, the 3A Ultimate Capacity Improvement, the 3B Ultimate Capacity Improvement, the 3C Ultimate Capacity Improvement, and the Golden Triangle Braided Ramps (GTBR) Capacity Improvement, (2) design, procure, install and test the ITS and tolling infrastructure equipment including tolling signs and tolling and communications equipment, cabling and connections associated with the ITS (i) for the Segment 3A Facility Segment, (ii) as set forth in Table 1-1 for the Segment 3B Facility Segment, and (iii) for the Segment 3C Facility Segment, and (3) upon TxDOT Substantial Completion of the TxDOT Works, to operate and maintain the Segment 3B Facility Segment. This scope of work forms the Mandatory Scope which Developer shall design, construct, operate and maintain in accordance with these Technical Provisions.

The Segment 3A Facility Segment, the ITS and tolling infrastructure equipment described in clause (2) above, the operation and maintenance of the Segment 3B Facility Segment described in clause (3) above, and the Segment 3C Facility Segment together make up the “Initial Mandatory Scope.” The construction limits for the Segment 3A Facility Segment, Segment 3B Facility Segment, and the Segment 3C Facility Segment are set forth in Section 1.2.1, Section 1.2.2 and Section 1.2.3 of these Technical Provisions, respectively.

Table 1-1: Developer’s Responsibilities for ITS & Tolling Infrastructure for the Segment 3B Facility Segment

Facility Documentation and Design	
Technical Detail Design Documentation*	X
Civil Work	
Field Equipment Support Structure for Tolling**	X
ITS and Tolling Field Equipment Wiring and Installation	X
ITS and Tolling Field Equipment Cabinets	X
Power generator to service the field equipment shelters at the Tolling Sites	X
Uninterruptible Power System (UPS)	X
Civil work related to environmental investigation and/or mitigations for any work other than the TxDOT Works	X
ITS (Equipment Provided by Developer)	
Network Communication including hardware and software	X
Network Communication Fiber Optic Cables	X
Closed Circuit Television (CCTV) System including hardware and software	X
ITS RFID Reader (Traffic Counter for Origin and Destination data collection)	X
Microwave Vehicle Detectors (MVD) including hardware and software	X
Road Weather Information Subsystem (RWIS) including hardware and software	X
Dynamic Message Signs (DMS) including hardware and software	X
Lane Control Signals (LCS) including hardware and software	X
Tolling (Equipment Provided by Developer - ITS Related)	
Electronic Toll Collection System (ETCS) Tolling Equipment including hardware and software	X
Tolling (Equipment Provided by Developer - ITS Related) (con't.)	
ETCS Toll Zone Controllers including hardware and software	X
Signs (Equipment Provided by Developer- ITS Related)	
Managed Lanes Signs including hardware and software	X

*Technical Design Documentation comprises Developer’s final design drawings, specifications, and quantities for ITS and tolling equipment.

**Developer shall provide and install all ancillary structures needed to install the ITS and tolling equipment on the gantries provided by TxDOT.

Developer shall ensure that the Work will accommodate and be compatible with the Approved NEPA Schematics unless provided otherwise in accordance with the FA Documents and as described below; provided that for the Segment 3C Facility Segment, the Work (x) from State Highway 114 to IH 820, Denton and Tarrant Counties, Texas shall be compatible with the Design Schematics provided as Attachment 1 in the Draft Documented Reevaluation Checklist (DRC) for Interstate Highway (IH) 35W, CSJ Nos: 0014-16-252, 0014-16-255, 0081-2-041, 0081-3-904, dated 10-04-2018 (Submittal No. 35FAW_4.1_00014 Rev2);—and (y) from IH 35W to State Highway 121/183/26, Tarrant County, Texas, the Design Schematics provided as Attachment 1 in the Draft Documented Reevaluation Checklist (DRC), Interstate Highway (IH) 820, CSJ Nos: 008-14-058, 008-14-059, 0014-16-194 dated 8-13-2018 (Submittal No. 35FAW_2.1_002156 Rev3). For the avoidance of doubt, nothing herein is intended to or shall alter or reduce the scope of work required of NTE Mobility Partners LLC as the developer under that certain Comprehensive Development Agreement for a Concession, North Tarrant Express Facility, dated as of June 23, 2009 (as amended), between TxDOT and NTE Mobility Partners LLC.

The General Purpose Lanes south of station 862+20, including structures, as depicted on the Initial Mandatory Scope Schematic may have to be demolished in order to build the Ultimate Configuration. Construction of any transitions to other segments in the NTE project or other non-project connecting facilities that occur outside the limits shown on the Mandatory Scope Schematic shall be included as part of the Mandatory Scope.

For the Segment 3A Facility Segment, regarding the Mandatory Scope General Purpose Lanes between the following stations, the existing pavement shall remain in place; however, Developer shall mill and overlay the wearing course prior to Service Commencement:

- Northbound GPL: between station 882+00 and station 904+00
- Southbound GPL: between station 881+00 and station 912+00

For the Segment 3A Facility Segment, the Initial Mandatory Scope is not compatible with the Ultimate Configuration at the following locations:

- IH-35W SB GPL: station 862+20 to station 959+40
- IH-35W NB GPL: station 862+20 to station 959+40
- IH-35W SB to IH-820 WB GPL DC: station 31+00 to beginning of ramp
- IH-820 EB to IH-35W SB GPL DC: station 10+00 to station 32+00

- SPUR 280 WB to IH-35W NB ML DC 280-35NBML: station 927+50 to station 934+00

The Initial Mandatory Scope for the Segment 3C Facility Segment is not required to be compatible with the Ultimate Configuration for the following elements; however none of the following shall preclude construction of 3C Ultimate Capacity Improvement as shown in Exhibit 2-A.5 of the FA:

- Adjusted geometry of IH-35W General Purpose Lanes and Frontage Roads between stations 1140+00 and 1190+00 due to removal of the SB I35W to WB SH170 General Purpose Lanes and Managed Lanes connectors.
- Adjusted geometry of IH-35W General Purpose Lanes and Frontage Roads between stations 1140+00 and 1190+00 due to removal of the EB SH170 to NB I35W General Purpose Lanes and Managed Lanes connectors.
- Adjusted geometry and civil works of Northbound and southbound General Purpose Lanes and Managed Lanes, and FHWA-approved reduced inside shoulder width, from station 1165+00 to station 1200+00 in order to keep the existing westbound and eastbound SH170 bridges over I35W. Developer shall reconstruct SH170 bridges over I35W as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration.
- Adjusted geometry and civil works of Southbound General Purpose Lanes exit ramp to Frontage Road from station 1189+00 to station 1200+00 in order to keep the existing westbound and eastbound SH170 bridges over I35W. Developer shall reconstruct the same as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration.
- Retain, with pavement overlay on, existing Northbound Frontage Road from station 1112+85 to station 1130+00 (centerline station 1113+38 to station 1130+65) in order to keep the existing northbound frontage road bridge over Henrietta Creek. Developer shall reconstruct the same as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration.
- Adjusted geometry and civil works of Northbound General Purpose Lane northern end of exit ramp to Frontage Road from center line station 1119+00 to station 1113+50 in order to keep the existing northbound frontage road bridge over Henrietta Creek. Developer shall reconstruct the same as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration.
- Outside lane of Frontage Roads shall have a width of 12ft.
- No construction of new Frontage Road at Southbound Frontage Road between Keller Hicks and Golden Triangle Blvd. Developer shall reconstruct this Frontage Road as part of the GTBR Capacity Improvement to be compatible with the Ultimate Configuration
- Two additional slip ramps located between Golden Triangle Boulevard and Heritage Trace Parkway as shown on the Initial Mandatory Scope Schematic:
 - From IH-35W NB GPL to NB ML

- From IH-35W SB ML to SB GPL
- As part of the GTBR Capacity Improvement Developer shall replace these slip ramps with braided ramps compatible with the Ultimate Configuration.
- No third SB General Purpose Lane between stations 1248+00 to 1281+00 in Initial Mandatory Scope. Developer shall construct a third General Purpose Lane as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration; provided that if elimination of the fourth General Purpose Lane that is shown in the Approved NEPA Schematics is not approved in the NEPA re-evaluation pursuant to Section 6.2.3 of the Agreement, then Developer shall also construct a fourth General Purpose Lane as part of the 3C Ultimate Capacity Improvement notwithstanding the differing schematic set forth in Exhibit 2-A.5 of the Agreement.
- Adjustment of geometry and civil works, for IH-35W SB ML to IH-820 WB GPL direct connector from station 34+25 to the west until the end of the acceleration lane taper. Developer shall reconstruct the same as part of the Mark IV Parkway intersection improvements if and when TxDOT issues a Directive Letter or Change Order therefor.

SH-170 General Purpose Lanes: Developer will provide a Facility that meets the following:

- SH-170 direct connectors to IH-35W will not be compatible to tie in to a 3+3 SH-170 configurations as shown in the Approved NEPA Schematic. SH-170 direct connectors will be compatible with a 2+2 configuration.

For the Segment 3C Facility Segment, Developer will not be required to provide, during the Term, the following elements (unless pursuant to a TxDOT Change):

- SH 170 General Purpose Lanes crossing IH-35W nor any Direct Connectors from SH170 GPL to northbound I35W ML and GPL and southbound I35W ML and GPL to westbound SH170

The following existing bridges are not required to be replaced in the Initial Mandatory Scope. Developer shall reconstruct the existing bridges as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration:

- East side Alliance Boulevard over IH-35W
- SH-170 WB Frontage Road (Alliance Gateway Freeway) over IH-35W
- SH170 EB Frontage Road (Alliance Gateway Freeway) over IH-35W
- Heritage Trace Parkway over IH-35W
- IH-35W NB Frontage Road over Henrietta Creek
- IH-35W SB Frontage Road over Henrietta Creek

Developer may widen and rehabilitate the existing northbound and southbound General Purpose Lanes bridges over Henrietta Creek in lieu of replacement based on the assumption that Developer will be able to achieve a condition rating score of at least 7 for all elements through rehabilitation work. If Developer is unable to attain such condition rating score through rehabilitation, then Developer shall replace such bridges as part of the Segment 3C Facility Segment Initial Mandatory Scope and shall bear all associated cost and schedule risks and impacts. Such circumstance shall not constitute a Compensation Event or Relief Event. If such bridges are not replaced as part of Initial Mandatory Scope, then Developer shall replace such bridges as part of the 3C Ultimate Capacity Improvement to be compatible with the Ultimate Configuration.

For the Segment 3C Facility Segment, the two added direct connectors at the I-35/IH820 interchange may require a limited number of Deviations listed below and approved by TxDOT:

- For IH820 EB to IH35W NB ML the controlling criteria is: Crest curve K=44 min, Sag curve K=64 min. Horizontal radius of 689' min. SSD=305 ft and a minimum design speed of 40 mph.
- For IH35W SB ML to IH820 WB the controlling criteria is: Crest curve K=61 min. Sag curve K=79 min. Horizontal radius of 725' min. SSD=305 ft and a minimum design speed of 40 mph.

With regard to the direct connector from IH-35W SB ML to IH820 WB, design exceptions will require approval by FHWA. Prior to requesting a Deviation or design exception, Developer must use good faith efforts and exhaust all commercially reasonable design and engineering options in order to comply with all design requirements of the Technical Provisions. If Developer must request a Deviation or design exception, it must provide detailed supporting documentation and prove to TxDOT and FHWA that the proposed design Deviation or design exception will not adversely impact safety of Users, mobility or traffic operations, and fully satisfies any other concerns raised by TxDOT or FHWA. If application for a design exception or Deviation is necessary, and if Developer is unable to obtain such design exception or Deviation for any reason, then Developer shall design the Project in compliance with all design requirements of the Technical Provisions as part of the Initial Mandatory Scope and shall bear all associated cost and schedule risks and impacts. Such circumstance shall not constitute a Compensation Event or Relief Event. Section 7.2.3 of the FA shall govern any request for such a Deviation.

At a minimum, Developer shall be responsible for completing the Mandatory Scope for the Facility, which shall be consistent with the elements and functionality of the Basic Configuration and Ultimate Configuration as set forth in the Approved NEPA Schematics and generally consists of:

- the design and construction of roadway, drainage, structures, landscaping, signing, lighting and traffic signals within the IH 35W corridor and at the IH 35W/IH 820 interchange including, General Purpose Lanes, managed toll lanes, Frontage Roads, and cross streets;
- reconstruction and realignment of the existing General Purpose Lanes and Frontage Roads on IH

35W;

- the maintenance and operation of the said improvements and existing infrastructure for the Segment 3A Facility Segment and Segment 3C Facility Segment and, upon TxDOT Substantial Completion, the Segment 3B Facility Segment;
- the design, installation, maintenance and operation of an open-road electronic toll collection system and equipment as necessary to allow collection of tolls from users of the Facility in accordance with the requirements of Section 21 of the Technical Provisions;
- design, construction, operation and maintenance of the additional 72 strand fiber from the Segment 3B Facility Segment terminus to the Segment 3C Facility Segment northern limit using 1.5” conduit and long sweeping 90-degree bends, in accordance with the terms set forth in Article I, Section 9 of Change Order No. 005, dated June 1, 2017, between TxDOT and Developer respecting the Facility;
- the establishment of Managed Lane tolling operations;
- for the Segment 3C Facility Segment, acquisition according to the FA of ROW necessary to achieve the Initial Mandatory Scope consistent with Exhibits 2-A.3 and 2-A.5 of the FA specifically as outlined in Section 7;
- the performance of Utility Adjustments as set forth in Section 6 of the Technical Provisions; and
- the development and implementation of a Maintenance Management Plan, including Handback Requirements, to be utilized from the opening of any section of the Facility to traffic until the end of the Term in accordance with Section 19 of the Technical Provisions;
- the development and implementation of an Operations Management Plan to be utilized from the opening of any section of the Facility to traffic until the end of the Term in accordance with Section 22 of the Technical Provisions; and
- subject to the terms of Exhibit 7 and 16 to the FA, design, construction, operation and maintenance of the 3A Ultimate Capacity Improvement, the 3B Ultimate Capacity Improvement, the 3C Ultimate Capacity Improvement, and the Golden Triangle Braided Ramps (GTBR) Capacity Improvement.

Developer shall manage, plan, execute, and control all aspects of the Work. Developer shall coordinate its activities with Governmental Entities and other Persons that are directly or indirectly impacted by the Work in accordance with Section 11.1 of the FA including, but not limited to coordinating, on a monthly basis, the Initial Mandatory Scope design and construction transition with the TxDOT Works and work at the IH-35W/IH-820 interchange being developed by the developer of the North Tarrant Express Segments 1-2W Facility. Developer shall coordinate and work collaboratively with TxDOT on the design, installation and testing of the ITS and tolling infrastructure equipment for the Segment 3B Facility Segment.

1.1.2 TxDOT Works

The design, development and construction of the TxDOT Works, which are elements of the Segment 3B Facility Segment, will be undertaken by TxDOT and include all work with the exception of the design, procurement, installation and testing of the ITS and tolling infrastructure including tolling signs and tolling and communications equipment, cabling and connections associated with the ITS of the Segment 3B Facility Segment. All civil work associated with the ITS and tolling infrastructure in the Segment 3B Facility Segment is included in the TxDOT Works. Refer to Exhibit 26 of the FA for information regarding the TxDOT Works.

Developer is required to coordinate and work collaboratively with TxDOT in accordance with Section 11.1 of the FA so that TxDOT may undertake certain work related to landscaping including vegetative land cover and aesthetic features and completion of Punch List items, if any, on the Segment 3B Facility Segment as required following TxDOT Substantial Completion. TxDOT Substantial Completion shall not be dependent on the completion of Work to be performed by Developer on the Segment 3B Facility Segment.

1.1.3 Coordination at Interface

Developer shall locate, configure and design the portion of the Segment 3A Facility Segment and the Segment 3C Facility Segment including its respective transition to the TxDOT Works so that the Segment 3A Facility Segment and Segment 3C Facility Segment are compatible and integrated with the TxDOT Works and provides a smooth, safe transition of traffic (and other infrastructure) to and from each Facility Segment, which includes but is not limited to design, environmental requirements, ROW acquisition, utility adjustments, geotechnical investigation, land surveying, earthworks, pavement construction, drainage, construction of Highway structures, landscaping, pavement marking, signing, lighting and traffic control. Refer to Section 11.1.1 of the FA for further requirements regarding coordination.

1.1.4 Capacity Improvements

Developer shall undertake implementation of Capacity Improvements to the extent set forth in Exhibit 16 of the FA. Developer shall cooperate with, work collaboratively with and not interfere with TxDOT whenever TxDOT designs and constructs Capacity Improvements.

1.1.5 Ultimate Configuration

The Mandatory Scope and the Additional Ultimate Capacity Improvements together form the Ultimate Configuration.

Developer shall design the Initial Mandatory Scope to minimize sections of the Initial Mandatory Scope that will become redundant to meet the requirements of the future Ultimate Configuration unless in accordance otherwise with the FA Documents. Developer's design shall provide for a feasible transition

from the Initial Mandatory Scope to the Ultimate Configuration unless in accordance otherwise with the FA Documents. Prior to construction of the Initial Mandatory Scope, Developer shall provide to TxDOT a schematic level design showing the transition from the Initial Mandatory Scope to the Ultimate Configuration. Such design shall include a draft sequence of construction plan, a preliminary traffic control plan, horizontal and vertical alignments, wall locations, cross-sections, and bridge layouts in accordance with TxDOT's *Project Development Process Manual*, Chapter 2, Section 4 - Preliminary Schematics, paragraph 2360 – Develop Typical Sections. For providing such schematic level design, Developer is not required to perform or prepare for any public involvement activities, prepare minute orders, coordinate with railroad companies, government entities or third parties, or give consideration to landscape and aesthetic requirements.

1.2 Facility Limits

1.2.1 Limits of Work for the Segment 3A Facility Segment

The schematics and approximate limits of the Work for the Segment 3A Facility Segment are as shown in Exhibit 2-A.1 to the FA (Initial Mandatory Scope Schematics).

1.2.2 Limits of Work for the Segment 3B Facility Segment

The schematics and limits of the work for the Segment 3B Facility Segment are as shown in Attachment A to Exhibit 26 of the FA.

1.2.3 Limits of Work for the Segment 3C Facility Segment.

The schematics and limits of the work for the Segment 3C Facility Segment shall be as shown in Exhibit 2-A.3 to the FA (Initial Mandatory Scope Schematics) and further described below:

General Purpose Lanes:

- Interface with Segment 3B TxDOT Works
- New SB General Purpose Lanes (2 lanes per direction) from station 1045+45 until station 1401+00
- Overlay SB General Purpose Lanes (2 per direction) from station 1028+00 to 1045+45
- New NB General Purpose Lanes (2 lanes per direction) from station 1070+12 until station 1401+00
- Overlay NB General Purpose Lanes (2 per direction) from station 1028+00 to 1070+12

Managed Lanes:

- Interface with Segment 3B TxDOT Works
- New SB Manage Lanes (2 lanes per direction) from station 1060+00 until station 1401+00

- New NB General Purpose Lanes (2 lanes per direction) from station 1084+16 until station 1401+00

SH 170 Direct Connectors:

- Managed Lane and General Purpose Lane Direct Connectors from SH-170 Alliance Gateway Freeway WB STA 0+00 to IH-35 SB
- Managed Lane and General Purpose Lane Direct Connectors from IH-35W NB to Alliance Gateway Freeway EB STA 0+00

Frontage Roads:

Overlay of existing NB Frontage Road:

Sta 1080+00 to 1118+00

Sta 1121+90 to 1159+00

Sta 1169+00 to 1187+00

Sta 1236+50 to 1271+50

Sta 1331+00 to 1399+50

Overlay of existing SB Frontage Road:

Sta 1081+00 to Sta 1122+00

Sta 1125+50 to Sta 1190+77.86

Sta 1238+00 to Sta 1267+86.91

Sta 1292+30 to Sta 1349+00

Sta 1361+00 to Sta 1402+00

With the exception of the Frontage Road locations specifically stated above, all Frontage Roads will be full depth construction with new subgrade.

IH-820 / IH-35W Direct Connectors:

- 1 direct connector from the IH-820 EB General Purpose Lanes to NB IH-35W Managed Lanes beginning approximately at Sta 17+00 to the connection with the NB IH-35W Managed Lane;
- 1 direct connector from the IH-35W SB Managed Lane to IH-820 WB General Purpose Lanes beginning approximately at Sta 134+00 to the connection with the IH-820 WB General Purpose Lanes

It is recognized that the IH 820/IH-35W managed lanes direct connectors are physically located in and

are being added to the Segment 3A Facility Segment, notwithstanding the fact that are described in the Limits of Work for the Segment 3C Facility Segment set forth in this Section 1.2.3 as contemplated by the definition of Segment 3C Facility Segment in Exhibit 1 to the FA.

Additional ROW will be needed at intermittent locations along the corridor.

1.2.4 Limits of Work for 3A Ultimate Capacity Improvement, 3B Ultimate Capacity Improvement, 3C Ultimate Capacity Improvement, GTBR Capacity Improvement and Additional Ultimate Capacity Improvements

The 3A Ultimate Capacity Improvement generally includes additional General Purpose Lanes and associated auxiliary lanes along northbound and southbound IH-35W from Station 590+00 to Station 959+40 and additional General Purpose Lanes and associated auxiliary lanes along eastbound and westbound IH-820 from Station 603+67 to Station 696+00.

The 3B Ultimate Capacity Improvement includes the additional General Purpose Lanes and associated auxiliary lanes along northbound and southbound IH-35W from Station 1401+00 to Station 1590+00 and also cross street infrastructure.

The 3C Ultimate Capacity Improvement includes the addition of a third General Purpose Lane and associated lanes along northbound and southbound IH-35W from Station 1028+00 to Station 1401+00. The details of 3C Ultimate Capacity Improvement are shown in Exhibit 2-A.5 to the FA.

The GTBR Capacity Improvement is shown in Exhibit 2-A.5 to the FA. The GTBR Capacity Improvement includes additional ramps from the northbound Managed Lanes to the General Purpose Lanes and from the southbound General Purpose Lanes to the Managed Lanes from Station 1250+00 to Station 1285+00 at Golden Triangle Boulevard. The GTBR Capacity Improvement Trigger Event has the meaning set forth in Part A, Section 4.3.2 of Exhibit 16 to the FA.

The Additional Ultimate Capacity Improvements generally include all other improvements shown on the Approved NEPA Schematics which are not included in the 3A Ultimate Capacity Improvement, the 3B Ultimate Capacity Improvement, the 3C Ultimate Capacity Improvement or the GTBR Ultimate Capacity Improvement described above. Temporary roadways built as part of the Initial Mandatory Scope may require removal to allow construction of the Ultimate Configuration.

Developer shall design and construct the Initial Mandatory Scope and the Mandatory Scope so that it is compatible with the Ultimate Configuration except where it is otherwise explicitly specified in these Technical Provisions, and Developer shall make provisions to accommodate the future construction as set

forth in these Technical Provisions.

Where the Initial Mandatory Scope or Mandatory Scope is not compatible with the Ultimate Configuration at the following locations and at such time any or all of the 3A Ultimate Capacity Improvement, the 3B Ultimate Capacity Improvement, the 3C Ultimate Capacity Improvement, GTBR Capacity Improvement or the Additional Ultimate Capacity Improvements are constructed, the following terms shall apply:

- a. Specifically, for the segment of IH-35W SB GPL from station 862+20 to station 959+40 and the segment of IH-35W NB GPL from station 862+20 to station 959+40, Developer shall construct all lanes needed to meet the requirements of the 3A Ultimate Capacity Improvement. Temporary roadways built as part of the Initial Mandatory Scope in these areas will require removal to allow for construction of the Ultimate Configuration due to new alignment.
- b. Specifically, for the IH-35W SB to IH-820 WB GPL DC from station 31+00 to the beginning of ramp, Developer shall construct all lanes to the beginning of the ramp needed to meet the requirements of the Additional Ultimate Capacity Improvements.
- c. Specifically, for the IH-820 EB to IH-35W SB GPL DC from station 10+00 to station 32+00, Developer shall construct 3 lanes to meet the requirements of the Additional Ultimate Capacity Improvements.
- d. Specifically, for the Spur 280 WB to IH-35W NB ML DC (280-35NBML) from station 927+50 to station 934+00, Developer shall remove the temporary connector to allow construction of the Ultimate Configuration due to new alignment.
- e. New direct connector from IH35W ML SB to IH820 GPL WB. (DC ML I35S-GPLW, (DCSBWB) does not comply with Ultimate Configuration from Station: 34+25 to the West until end of acceleration lane taper).

1.2.5 Other Considerations

Developer acknowledges that certain components of the Work, including certain signing, pavement marking, Intelligent Transportation System components, tolling infrastructure, buildings and enclosed facilities, necessary for operating the Facility, will be located outside the Facility limits.

Developer shall determine the full scope of the Facility through thorough examination of the FA Documents and the Approved NEPA Schematics. Developer's examination of the Approved NEPA Schematics will not increase the scope of Work beyond the Initial Mandatory Scope or Mandatory Scope outlined in Section 1.2.1, Section 1.2.2, Section 1.2.3 and Section 1.2.4 above and will expressly exclude any works of the Additional Ultimate Capacity Improvements under Section 1.2.4.

1.3 DB Phase Requirements

All Developer Design Work and Construction Work shall be in compliance with (a) these Technical Provisions, (b) the Technical Documents in effect as of the Effective Date, except where a more recent Technical Document or requirement thereof, or a different requirement, is explicitly specified in the FA Documents, and (c) Good Industry Practice.

Developer shall coordinate with TxDOT and adjacent Governmental Entities and other third parties as appropriate to determine the design criteria, standards, and specifications of those components of the Work which Developer will construct but which are maintained by others as specified in the FA. For components of the Work which impact the infrastructure of any Governmental Entity or third party entity, Developer's design shall conform to the design requirements of such entity.

1.4 Operations and Maintenance (O&M) Work Requirements

Developer shall operate and maintain the Facility in accordance with the FA Documents. Responsibilities for operating and maintaining the Facility are set forth in Table 1-7 below:

Table 1-7: O&M Responsibilities

TIMING	Frontage Roads¹	General Purpose Lanes¹	Managed Lanes¹
Segment 3A Facility Segment (including O&M for Existing Improvements)			
From NTP2 for the balance of the Term of the FA	Developer	Developer	Developer
Segment 3B Facility Segment (including O&M for Existing Improvements)			
During construction of TxDOT Works	TxDOT	TxDOT	TxDOT
From TxDOT Substantial Completion for the balance of the Term of the FA	Developer	Developer	Developer
Segment 3C Facility Segment (including O&M for Existing Improvements)			
From NTP2 (3C) for the balance of the Term of the FA	Developer	Developer	Developer
GP Capacity Improvements			
From start of construction of GP Capacity Improvements for the balance of the Term of the FA	Developer	Developer	NA
3C Ultimate Capacity Improvement			
From start of construction of 3C Ultimate Capacity Improvement for the balance of the Term of the FA	Developer	Developer	NA

Note:

1. This includes all associated structures and elements of the Facility

Developer is not responsible for operations and maintenance of roadways beyond the longitudinal limit of the Work determined by the end of transitions from the Initial Mandatory Scope, Mandatory Scope or the Ultimate Configuration, as applicable, to existing roadways and as shown in Attachment 1-1 of the Technical Provisions, NTE Limits of Maintenance.

2 PROJECT MANAGEMENT

Replace the third paragraph of Section 2 of Book 3 with the following:

A listing of documents to be included in the Facility Management Plan is contained in Attachment 2-1 of the Technical Provisions, Facility Management Plan Contents, which also indicates when each document must be submitted to TxDOT.

2.1 Administrative Requirements

Replace Section 2.1.1 through Section 2.1.1.2.3 of Book 3 with the following:

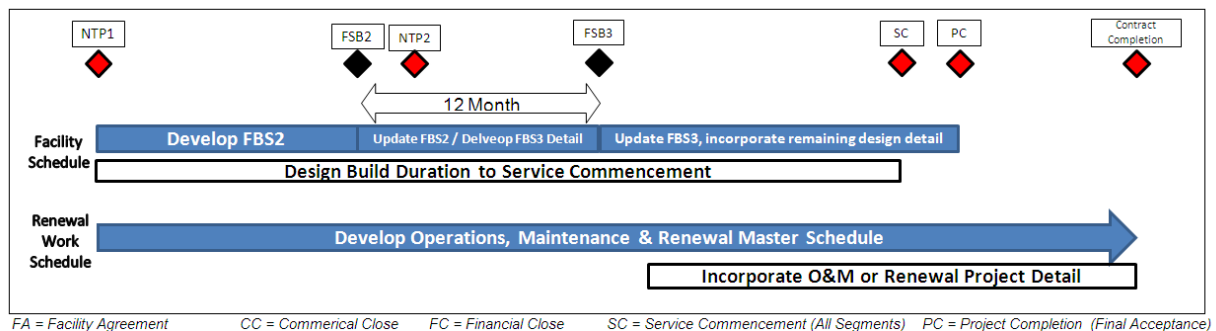
2.1.1 General Schedule Requirements

The Facility Schedules shall define the timeframe for completion of the Work and achievement of contract milestones and be used to monitor progress and denote changes that occur during design, construction, operations and maintenance as well as, if applicable, serving to determine the amount due to Developer for a progress payment.

The scheduling software employed by Developer shall be compatible with the current and any future scheduling software employed by TxDOT (currently Primavera 6.2). Compatible shall mean that the Developer-provided electronic file version of a schedule may be loaded or imported by TxDOT using TxDOT’s scheduling software with no modifications, preparation, or adjustments to do so.

Developer shall manage and execute the Work using schedules developed for management and execution of the DB Phase, the applicable Facility Baseline Schedule (FBS) and for activity related to operations, maintenance and Renewal Work, the Renewal Work Schedule. Developer shall develop and maintain a separate Facility Baseline Schedule for each of the Segment 3A Facility Segment and the Segment 3C Facility Segment. All references in these Technical Provisions to the Facility Baseline Schedule or FBS shall mean, as applicable, the Facility Baseline Schedule for the Segment 3A Facility Segment or for the Segment 3C Facility Segment.

Figure 1 – Program Schedule Timeline



The FBS will be developed in stages beginning with the FBS-1 (Preliminary Baseline Schedule). At each stage of FBS development, a new version will be created with more detail. Developer shall submit the Facility Baseline Schedule (FBS-2) for the Segment 3A Facility Segment to TxDOT for review and approval prior to the issuance NTP2 and shall submit a separate Facility Baseline Schedule (FBS-2) for the Segment 3C Facility Segment to TxDOT for review and approval prior to issuance of NTP2 (3C). TxDOT will review the applicable Facility Baseline Schedule (FBS-2) and provide comment within 30 calendar days of submission. In the event that TxDOT does not accept a Facility Baseline Schedule, Developer shall revise and resubmit such Facility Baseline Schedule with changes clearly identified. TxDOT will review each resubmission of such Facility Baseline Schedule within 21 calendar days of receipt of the resubmission. Approval of the Facility Baseline Schedule (FBS-2) in respect of the Segment 3A Facility Segment shall be a condition of NTP2 and approval of the Facility Baseline Schedule (FBS-2) in respect of the Segment 3C Facility Segment shall be a condition to issuance of NTP2 (3C).

Developer shall submit an electronic version of the schedule in its native format for each submittal along with the project schedule narrative.

Before commencement of any scheduled construction Activity in respect of the Segment 3A Facility Segment or the Segment 3C Facility Segment, Developer shall obtain TxDOT approval of the applicable Facility Baseline Schedule (FBS). Developer shall progress and update the FBS through schedule updates until a subsequent version of the FBS is approved by TxDOT.

Developer is solely responsible for planning and executing the Work and TxDOT's approval of the FBS does not:

- Imply approval of any construction methods or relieve Developer's responsibility to provide sufficient materials, equipment, and labor to guarantee completion of the Facility in accordance with the FA Documents.
- Attest to the validity of assumptions, activities, relationships, sequences or any other aspect of the FBS.

Failure of Developer to include any element of the Work required by the FA Documents in the approved FBS does not relieve Developer of the responsibility to perform such Work.

2.1.2 Facility Baseline Schedule

The FBS shall be developed and implemented in the following stages.

- a) FBS-1: Preliminary Baseline Schedule submitted prior to execution of the FA, and for the Segment 3C Facility Segment prior to execution of the change order therefor.
- b) FBS-2: Developer shall use the applicable Preliminary Baseline Schedule (FBS-1) as a

foundation to prepare the FBS-2 for the Segment 3A Facility Segment and the FBS-2 for the Segment 3C Facility Segment. Developer shall submit the Facility Baseline Schedule (FBS-2) to TxDOT for review and approval. FBS-2 shall reflect the intended execution plan meeting all schedule requirements. Activity quantities related to Schedule of Value costs shall be based upon Developer's proposed design. The data date for FBS-2 shall be the date of NTP1 or NTP1 (3C), as applicable. The approved FBS-2 shall be progressed and updated monthly until a subsequent version (FBS-2+) is approved.

- c) FBS-3: Inclusion of final design Elements will be incorporated into the FBS-2 schedule updates as release for construction (RFC) plans are completed. FBS-3 will be submitted to TxDOT on or before 12 months after NTP2 or NTP2 (3C), as applicable, and shall reflect all final design elements to date, final quantity assessment for each scheduled construction activity, the updated plan and completed Schedule of Values reflecting final design. Developer shall update FBS-3 monthly until a subsequent revision (FBS-3+) is approved or the applicable Service Commencement Date, whichever is earlier.

The approved FBS or current approved revised FBS shall remain in force until a subsequent FBS or revised FBS is approved by TxDOT.

Developer shall include a separate narrative report with the FBS which describes the general sequence of design and construction, the proposed Critical Path and all applicable Milestone Schedule Deadlines.

Developer shall submit the FBS in accordance with the Work Breakdown Structure (WBS), the minimum requirements of which are included in Attachment 2-2 of the Technical Provisions, Work Breakdown Structure Requirements, which is cost loaded in accordance with Table 2-1, to TxDOT for review and approval. Each Schedule Activity shall be mapped to one of the WBS levels. Each segment of the Work shall be to the same level of detail. As a minimum, Developer shall utilize the organizational structure included in Attachment 2-3 of the Technical Provisions, Organizational Structure for Cost Reporting, for reporting Facility costs.

Table 2-1: Schedule Level of Detail Requirements

Discipline	Detail	FBS-1	FBS-2	FBS-3
Right-of-Way Acquisition	WBS Level	4	All levels	All levels
	Cost Loading	No	Yes	Yes
	Resource Loading	No	No	No
	Maximum duration of Schedule Activity	No maximum	20 Days ¹	20 Days ¹
Preconstruction Submittals & Permitting	WBS Level	4	All levels	All levels
	Cost Loading	No	No	No
	Resource Loading	No	No	No
	Maximum duration of Schedule Activity	No maximum	20 Days ¹	20 Days ¹
Utility Coordination	WBS Level	4	All levels	All levels
	Cost Loading	No	No	No
	Resource Loading	No	No	No
	Maximum duration of Schedule Activity	No maximum	20 Days ¹	20 Days ¹
Design	WBS Level	4	All levels	All levels
	Cost Loading	No	Yes	Yes
	Resource Loading	No	No	No
	Maximum duration of Schedule Activity	No maximum	20 Days ¹	20 Days ¹
Utility Relocation	WBS Level	5	5	All levels
	Cost Loading	Yes	Yes	Yes
	Resource Loading	No	No	No
	Maximum duration of Schedule Activity	No maximum	No maximum	20 Days ¹
Construction	WBS Level	7	8	All levels
	Cost Loading	Yes	Yes	Yes
	Resource Loading	No	No	No
	Maximum duration of Schedule Activity	No maximum	20 Days ¹	20 Days ¹

¹ Unless otherwise approved by TxDOT.

2.1.3 Facility Baseline Schedule Requirements

2.1.3.1 Facility Baseline Schedule Overview

Developer shall define a complete and logical plan that can realistically be accomplished for executing the Work. The FBS shall:

- a. Reflect the proposed approach to accomplish the Work
- b. Include all major activities of Work required by the FA Documents and also include activities for property acquisitions, Utility Adjustments, permit acquisitions, and interfaces with other projects and Governmental Entities.
- c. Indicate the sequence of performing each major activity and the logical dependencies and inter-relationships among the activities and shall provide a sufficient number of activities to assure

adequate planning to allow monitoring and evaluation of progress and, if applicable, payments.

- d. Include a listing of all submittals and submittal activity durations including specific durations for TxDOT review and/or approval of Developer’s submittals.

2.1.3.2 Facility Baseline Schedule Coding

Developer shall utilize an activity coding structure for the FBS that allows project activities to be sorted by type of work and location of work, or as mutually agreed to by Developer and TxDOT. Each activity shall be assigned an activity code for each Work Element to indicate the type of work related to the activity. Activity codes shall be Global Code values and shall be as indicated in Table 2-2 below.

Table 2-2: “Type of Work” Code Values

Code Value	Description
AGGREGATE	Granular Base
CLEAR&GRUB	Clear & Grub, Removal
DEMO	Building demolition, other
DESIGN	Design, studies, RFC package deliverables
DRAINAGE	Pipe, Box Culvert, Headwall
EXCAVATION	Cut, fill, excavate
FLATWORK	Curb, gutter, sidewalks
LANDSCAPE	Topsoil, mulch, seeding
MOT	Maintenance of Traffic
PAVING	Concrete, Asphalt, etc.
PROCURE	Procurement of materials
ROW	Right-of-Way
SIGNALS	Signals, foundations, poles
SIGNING	Signing - Permanent
STRIPING	Striping - Permanent
SUBSTRUCTURE	Foundation, Columns, Bent, Piles, Abutments (bridge)
SUPERSTRUCTURE	Girders, Deck, Approach Slabs, Parapet, Polymer Overlay (bridge)
SURCHARGE	Consolidation & Settlement Times
TRAIL	Trails - Pedestrian & Bike
UTILITY-COMM	Utility Communication
UTILITY-GAS	Utility Gas
UTILITY-POWER	Utility Power
UTILITY-WATER	Utility Water/Irrigation/Sewer
UTILITY - OTHER	Other Miscellaneous Utilities

Code Value	Description
WALLS	Noise, MSE, Retaining
NA	Not Applicable – Not on Mainline, Misc, LOE, etc. (Misc. programmatic activities not categorized by Type of Work code)

2.1.3.3 Work Breakdown Structure

The FBS shall be organized consistent with the WBS. Developer may add WBS elements and/or levels to those presented in Attachment 2-2 of the Technical Provisions with TxDOT’s written approval. Developer shall further develop and detail the initial WBS in accordance with its specific Schedule Activities and retain the ability to summarize to at least the same level as shown in Attachment 2-2 or as approved by TxDOT. Developer shall assign the WBS structure consistently and uniformly among all similar activity types and shall develop the WBS with clearly identifiable linkage to the Schedule of Values and Schedule Activities.

2.1.3.4 Calendars

Developer shall define calendars as follows:

- a. TxDOT holidays are non-work days.
- b. Facility calendar descriptions shall begin with a unique project identifier.
- c. The application of “Standard” Primavera calendars is not acceptable.
- d. Potential non-work weather days are identified and included in each calendar’s work month.
- e. Adequately represent non-work days associated with limitations (such as paving seasons, utility shutdown seasons, landscaping seasons, etc.)
- f. A 7-day calendar to be utilized for cure, settlement, and other activities as appropriate is included.
- g. Facility calendars are assigned consistently among similar activity types.

2.1.3.5 Milestones / Constraints

Each Milestone Schedule Deadline shall be separately identified, conform to the scheduling requirements set forth in the Milestone Schedule, and be assigned a “finish no later than” constraint date. Developer shall include additional milestones in the FBS to define significant events such as NTPs, Substantial Completion, Service Commencement, start and finish of major segments/areas/regions of work, major traffic changes and coordination points with outside entities such as Utilities.

The FBS shall not contain any constrained activities, other than contract milestones, without TxDOT approval. Utilization of constraints following the FBS-2 approval will be allowed with TxDOT’s approval.

2.1.3.6 Schedule Activities

Developer shall describe activities with a unique and logical activity description to easily identify the

specific Schedule Activity so that the scope of work is identifiable and progress on each activity can be measured. Each Schedule Activity description shall indicate its associated scope and location of work such as type of work, bridge number, station to station locations, side of highway, pipe number, etc. and shall include a verb in the activity description to indicate the action undertaken such as install, place, fabricate, etc. Schedule Activities shall be created so that the Work is broken down into similar manageable work Elements with greater detail added as the schedule progresses from FBS-1 to FBS-3 (for example, bridges shall be broken down minimally into foundations, substructure, superstructure, and deck for FBS-3).

Developer shall define the duration of each Schedule Activity and shall limit the maximum duration according to Table 2-1 unless otherwise approved by TxDOT. Exceptions could include non-work type activities such as mobilization, design, fabrication, settlement durations, curing and long lead procurement items. The duration for each Schedule Activity shall be the time required to complete the Work based on the quantity of Work divided by reasonably anticipated production rates when applicable. Separate Schedule Activities for cure time, major inspection points requiring preparation, submittal periods, Environmental Approvals and other time consuming activities shall be included.

Developer shall clearly identify the relationships and logic that tie activities together. Each Schedule Activity is to have at least one predecessor and one successor Schedule Activity, except for the NTP and the Final Acceptance milestones. Unnecessary relationships or excessive ties to end milestones shall be avoided.

2.1.3.7 Miscellaneous

In developing schedules, Developer shall use schedule software settings similar to Primavera schedule software settings, if not using Primavera, as follows:

- a. *Critical activities shall be defined as Longest Path* schedule option setting in lieu of *Total Float Less Than or Equal to x*.
- b. *Retained Logic* schedule option setting to calculate the Critical Path and controlling Schedule Activities in the FBS and subsequent schedule updates.
- c. Critical Path shall be highlighted in red on all schedules to distinguish critical Schedule Activities from other Schedule Activities and Float shown for all Schedule Activities.
- d. *Leveling Resources* schedule option shall only be used with prior notification to and concurrence of schedule update procedures by TxDOT.

Developer shall cost-load the FBS as follows:

- a. Provide a sufficient number of Schedule Activities so that the budget of any one Schedule Activity does not exceed \$1,500,000.00 in the FBS-3 schedule, unless otherwise approved by TxDOT.

- b. Allocate the total dollar amount that represents all of the Work that is reimbursable under Federal Law by the Public Funds Amount [or Segment 3C Public Funds Amount, as the case may be,]¹ throughout the Payment Activities in the FBS. Such allocation shall not artificially inflate, imbalance, or front-load line items.
- c. Developer's indirect costs such as project management, administration, contingencies, site cleanup and maintenance and security costs related to design-build costs shall be prorated through all Payment Activities.
- d. Projected operations and maintenance costs are non-reimbursable and shall not be cost-loaded.

Developer shall revise the cost loading during the course of the Work in Facility Status Schedule Updates if it becomes necessary to add, combine, eliminate, or modify Payment Activities or Schedule Activities to reflect modifications to the Work due to an executed Change Order. Change Orders as approved by TxDOT shall be added into the schedule with appropriate Schedule Activities and Payment Activities, resources, and units/budget to represent the modified scope of work. A WBS level for each executed Change Order shall be added under the "Change Modification" level of the cost breakdown structure, Table 2 of Attachment 2-3 of the Technical Provisions. All costs, if applicable, shall be mapped to the Change Order WBS level accordingly.

If applicable, revisions to the FBS and consequent realignment of funds between Payment Activities shall be requested by Developer through a Change Request, Compensation or Relief Event Notices. The total cost in the schedule shall match the total cost for the applicable scope of Work inclusive of all approved Change Orders. As Schedule Activities are added or split out in the course of revising a schedule update, units/budget for those Schedule Activities shall also be re-allocated to represent the appropriate quantity to accomplish the Work within the Schedule Activity duration.

All executed Change Orders shall be incorporated into the originally planned execution of the Work. Developer shall submit to TxDOT a revised FBS within 14 days after each Change Order is executed; provided that Developer shall use a separate FBS for the Change Order for the Segment 3C Facility Segment.

2.1.3.8 Float

Developer shall not sequester total Float through manipulating calendars, extending activities durations or any other such methodology. Float suppression techniques, negative float, and Schedule Activity durations, logic ties, and/or sequences deemed unreasonable by TxDOT shall not be used. Float shall not be considered as time for the exclusive use of or benefit of either TxDOT or Developer but shall be

¹ Note to Draft: To be removed on the Amendment Effective Date in accordance with the Change Order Agreement if there is no Segment 3C Public Funds Amount.

considered as a jointly owned, expiring resource available to the Facility. Float shall not be used to the financial detriment of either Party. Any schedule, including the FBS and all updates thereto, showing an early Service Commencement Date shall show the time between the scheduled Service Commencement Date and the applicable Milestone Schedule Deadline as the “Total Float”.

2.1.3.9 Schedule of Values

Concurrent with the submission of FBS-2 for the Segment 3A Facility Segment, Developer shall submit to TxDOT a complete Schedule of Values for all Payment Activities in respect of the same for TxDOT’s approval. TxDOT’s approval of the Schedule of Values for the Schedule 3A Facility Segment shall be a condition of NTP2. If applicable, no payment by TxDOT from the Public Funds Amount will be made until the Schedule of Values relating to the Segment 3A Facility Segment is approved by TxDOT. [Concurrent with the submission of FBS-2 for the Segment 3C Facility Segment, Developer shall submit to TxDOT a complete Schedule of Values for all Payment Activities in respect of the same for TxDOT’s approval. TxDOT’s approval of the Schedule of Values for the Schedule 3C Facility Segment shall be a condition of NTP2 (3C). If applicable, no payment by TxDOT from the Segment 3C Public Funds Amount will be made until the Schedule of Values relating to the Segment 3C Facility Segment is approved by TxDOT.]²

Pertaining to the presentation of the Schedule of Values:

- a. Payment Activities shall be organized and grouped according to Table 2 of Attachment 2-3 of the Technical Provisions. There can be one or more Payment Activities for each of the lowest (terminal) organizational structure elements. For example, earthwork (organizational level III) could have one Payment Activity or multiple Payment Activities that roll up costs to the organizational structure Level III element.
- b. Each Payment Activity from the FBS shall contain a unique identification number, the activity description, the quantity, the applicable unit, the unit price and scheduled cost value.

The Schedule of Values shall contain separate activities for temporary roads for access, off-site access roads, project clean-up as well as planned maintenance, as applicable, to capture budgeted costs. Developer’s project management, administration, QA/QC, contingencies and any allowance for inflation, profit and financing, as well as site security shall be prorated through all Payment Activities so that the sum of all the Schedule of Values line items equals the total cost.

If it becomes necessary to add, combine, eliminate or modify any Payment Activities due to changes in the Work, a revised Schedule of Values as derived from a revised FBS shall be submitted within 14 days

² Note to Draft: To be removed on the Amendment Effective Date in accordance with the Change Order Agreement if there is no Segment 3C Public Funds Amount.

after the respective Change Order is executed, the Relief Event or Compensation Event occurs, or a TxDOT Directive Letter is issued. TxDOT will review the Submittal and within 21 days of submission, return it to Developer as approved or returned for resubmission within 7 days from the date of receipt by Developer. Developer shall repeat the submittal process until receiving TxDOT approval of the Submittal.

2.1.3.10 Facility Baseline Schedule Narrative

Developer shall provide a schedule narrative with the FBS-2 schedule and subsequent FBS submittals as follows:

- a. Describe the construction philosophy supporting the work plan and approach to the Work outlined in the FBS.
- b. Describe the approach used to apply relationships between Schedule Activities, such as physical or chronological relationships between work activities, sequencing due to crew or equipment resources, or timing of work based on limitations (such as ROW, environmental, utilities, etc.).
- c. Describe any limited resources, potential conflicts, or other salient items that may affect the schedule and how they may be resolved.
- d. Describe the Critical Path and identify challenges that may arise associated with the Critical Path.
- e. Describe adverse weather sources and calculations used for assumptions in determining potential non-work weather days.
- f. Describe activity coding structures and how they will be used.
- g. Provide a list of planned resources describing crews, crew size, major equipment, and production rates. Only planned resources available to Developer shall be included in the work force listing.
- h. Provide a list of applicable Schedule Activities and justification for usage of:
 - Schedule Activities with durations exceeding 20 days
 - Constraints
 - Unusual calendars
 - Assumptions and calculations for non-work weather days added to calendars
 - Lag

Along with the schedule narrative, Developer shall include layouts generated from the scheduling software (PDF file) to illustrate the following:

- Developer's approach to work (based on WBS or other applicable coding) including, at a minimum, columns for Schedule Activity ID, Schedule Activity name, start, finish, original duration, remaining duration, total float, longest path, budgeted cost, and Gantt chart
- Longest Path layout
- Other layouts or reports as agreed upon with the TxDOT

2.1.3.11 Facility Baseline Schedule Submission

Developer shall establish a sequential numbering system for schedule Submittals and associated reports to allow easy identification of FBSs, schedule updates and re-submissions. All schedules, charts and diagrams shall display the project title, the data date and a legend indicating the various symbols used and their meanings. Developer shall provide the following for each schedule Submittal:

- a. One electronic copy in native software of the schedule
- b. One electronic copy in pdf format of the narrative report
- c. One electronic copy in pdf format of layouts as generated from the scheduling software

TxDOT will review the schedule Submittal and within 30 days of submission, return it to Developer as approved, approved with comments to be addressed in the following schedule update, or returned for resubmission within 20 days from the date of receipt by Developer. Developer shall repeat the submittal process until receiving TxDOT approval of the Submittal.

2.1.4 Facility Status Schedule Updates

2.1.4.1 Facility Status Schedule Update Requirements

Developer shall provide schedule updates that comply with all FBS requirements. Developer shall provide separate schedule updates for the Segment 3C Facility Segment. Data dates for schedule updates shall be the day after the progress period closes. No changes in Schedule Activity durations, calendar assignments, logic ties, or constraints will be allowed without TxDOT's written approval. Developer shall show actual progress for each Schedule Activity in the schedule updates such as:

- a. Actual start and finish dates for completed Schedule Activities
- b. Actual start dates, physical percent complete and remaining duration for Schedule Activities in progress
- c. Projected sequences of Schedule Activities for future work
- d. Revised relationships and durations for unfinished Schedule Activities, if warranted
- e. A well-defined Critical Path

For each schedule update, Developer shall ensure that:

- a. Planned budget values match total Facility cost or revised total Facility cost inclusive of all authorized Change Orders.
- b. All planning changes, adjustments, or revisions in sequencing and timing of the remaining Work are accurately represented.

If Work is performed out of sequence, Developer is required to implement logic changes consistent with the retained logic method of scheduling to allow the out-of-sequence Work to proceed.

Through schedule updates, Developer may demonstrate proposed modifications to planned Work that

require adding or deleting activities, changing Schedule Activity descriptions, or revising Schedule Activity durations or logic that are consistent with the following requirements:

- a. No changes are to disrupt the integrity or comparative relationship between current and previously approved FBSs or schedule updates.
- b. A Schedule Activity ID can only be used once (i.e., do not delete a Schedule Activity then create a new Schedule Activity at a later date utilizing the same Schedule Activity ID).
- c. Schedule Activity descriptions may be revised for clarification, but are not to be altered to represent a different scope than originally intended. For example, an earthwork activity may be further defined by adding station limits but the description cannot be changed to concrete paving with related logic ties.
- d. If changes impacting the Critical Path result in an extension of the Service Commencement Date for the Segment 3A Facility Segment or the Segment 3C Facility Segment, as the case may be, beyond contractual limits, Developer shall provide a narrative of the changes in logic driving the stipulated longest path and the justification for the CPM change. Additionally, the narrative shall indicate Developer’s plan to mitigate the negative float and re-align the CPM schedule within the contract requirements.
- e. Cost loaded Schedule Activities shall not be deleted from the FBS in order to retain the integrity of target (Baseline) schedule analysis. Rather, Schedule Activities to be deleted shall be deleted or shall be progressed to 100% and relationship logic modified or deleted accordingly.
- f. Progress irrelevant (to be deleted) Schedule Activities with actual start and finish dates reflective of the modified update period:
 - a. Add “DELETED ACTIVITY” in the Schedule Activity description.
 - b. Remove driving relationship ties from the subject Schedule Activity in order to eliminate it from the CPM model.
 - c. Budgeted costs assigned to the deleted Schedule Activity shall be removed and re-distributed to fragmented detailed Schedule Activities or similar “Type of Work” activities.
 - d. A WBS level shall be created for “DELETED ACTIVITIES” and assigned to the deleted Schedule Activity to maintain good housekeeping practices.

2.1.4.2 Facility Status Schedule Update Narrative

Developer shall provide a narrative with each schedule update submittal which addresses each of the following:

- a. Description of the Work performed during the progress period. Describe progress for each segment/section and the Facility as a whole, including all phases of Work and interim milestones

organized and reported by the defined WBS.

- b. Provide a summary of QA/QC issues that can potentially affect the CPM model.
- c. Explanation of deviations between the Work planned and the Work performed for the period.
- d. Description of the Work to be accomplished during the next period.
- e. Description of the current Critical Path of the Work, explaining any changes since the previous update as well as potential issues and proposed resolutions.
- f. Explanation of significant changes to the schedule since the previous update.
 - Provide the reason or justification for the changes, and
 - Describe any resulting affects or impacts to the project schedule. Particular focus should be on any changes that affect critical or near-Critical Paths.
 - Explain changes to:
 - Calendar
 - Schedule Activity unit/budget allocations
 - Planned resource (crew) allocations that deviate from the baseline work plan
 - Critical Path
- g. Identification of requested and/or required TxDOT or Independent Engineer actions, if applicable, for the next month.
- h. Status on pending items applicable to the schedule such as:
 - Permits, easements, agreements
 - Contract changes or time adjustments
 - Relief Events or Compensation Events that were executed during the period from the submission of the previous month's progress report to the submission of the current progress report
 - Time Impact Analyses
- i. Current and anticipated problems or delays including:
 - Listing of current/anticipated problems and/or delays with cause and effect on work, milestones and completion dates. A summary of the resolutions (status) to the problems and/or delays listed above (resolved, ongoing or anticipated).
 - Developer's plans on how to mitigate or resolve ongoing and/or anticipated problems and/or delays.
 - Identification of action TxDOT needs to take and required timeline for actions to be taken, to avoid or mitigate the problems or delays.

A discussion of problems or delay in the schedule update narrative does not relieve Developer of complying with contractual requirements regarding notification and documentation of claims.

If any actual dates are changed or corrected in any following month, Developer shall submit a separate

narrative with the schedule update providing an explanation of the change.

Along with the schedule update narrative, Developer shall include layouts generated from the scheduling software, in pdf format, to illustrate the following:

- a. Layout to demonstrate Developer’s approach and progress of Work based on WBS or other applicable coding. At a minimum include columns for Schedule Activity id, Schedule Activity name, start, finish, original duration, remaining duration, total Float, budgeted cost, and Gantt chart. The Gantt chart shall contain current planned bars and baseline / target bars that represent the previous period’s progress forecast.
- b. Longest path layout organized by WBS and sorted by early start.
- c. A 90-day look ahead Gantt chart showing all upcoming Submittals from Developer and approvals required by TxDOT or other Governmental Entities.
- d. A 90-day look ahead Gantt chart grouped by WBS and sorted by early start date.
- e. Graphical report which compares Developer’s actual monthly progress to the previous months planned progress, organized by WBS .
- f. A 90-day look ahead Gantt chart of Design Document Submittals for the forthcoming period.
- g. Monthly expenditure projections and cash expenditure curves by WBS or as requested by TxDOT, if applicable.
- h. Other layouts or reports as agreed upon or requested by TxDOT.

Draft Payment Requests, if applicable, shall accompany the schedule update narrative.

In addition to the schedule update narrative, Developer shall provide a separate report on the Milestone Schedule Deadlines showing the schedule dates for the immediate prior month and the current month. Developer shall provide separate reports on the Milestone Schedule Deadlines for the Segment 3C Facility Segment. For variances greater than 30 Days, Developer shall include a narrative to explain why the dates have changed.

2.1.4.3 Facility Status Schedule Update Submission

Developer shall submit to TxDOT the schedule update, narrative and agreed upon layouts or reports each month during the life of the DB Phase beginning with the first full month after NTP2 with respect to the Segment 3A Facility Segment or NTP2 (3C) with respect to the Segment 3C Facility Segment, as applicable. Developer shall provide the following for each schedule update Submittal:

- a. One electronic copy in native software of the schedule file
- b. one electronic copy in pdf format of narrative report
- c. one electronic copy in pdf format of, agreed upon, layouts/reports as generated from the scheduling software
- d. The project narrative as described in Section 2.1.4.2 above.

TxDOT will review schedule updates for consistency with Developer's WBS and the currently approved FBS and for conformance with the FA Documents. TxDOT will return the schedule updates to Developer as approved, approved with comments to be addressed in the following schedule update, or not approved with comments to be incorporated for resubmission within 14 days of receipt by Developer. The submittal process shall be repeated until Developer receives TxDOT approval of the Submittal.

2.1.5 As-Built Schedule

Upon completion of the Punch List, Developer shall submit the schedule update identified as the "as-built schedule". Developer shall submit a separate "as-built schedule" update for the Segment 3C Facility Segment. The as-built schedule shall reflect the exact manner in which the Work up to each Final Acceptance was actually performed including start and completion dates, Schedule Activities, actual durations, sequences and logic.

2.1.6 Time Impact Analysis

Developer shall submit to TxDOT a written time impact analysis (TIA) in each of the following situations:

- a. As part of a Relief Request or Compensation Event Notice based on a delay as set forth in the FA Documents.
- b. If Developer has claim for delay.

Developer shall submit a separate TIA for each delay event.

TxDOT may request, at any time, a TIA demonstrating impact or potential impact to the schedule resulting from claimed Relief Events or Compensation Events which are being negotiated between TxDOT and Developer. If TxDOT requests a TIA, Developer shall submit the requested TIA within 15 Days of receiving the request. TxDOT will return the TIA to Developer as approved or not approved with comments to be incorporated for resubmission within 7 days of receipt by Developer. The submittal process shall be repeated until Developer receives TxDOT approval of the Submittal.

Submission of a TIA does not relieve Developer of complying with all contractual requirements regarding notification and documentation of potential Relief Events, Relief Events, potential Compensation Events and Compensation Events.

Time extensions will only be considered if:

- a. The Relief Event is demonstrated to affect the controlling operation on the Critical Path. Changes that do not affect the Critical Path will not be considered as the basis for a time adjustment.
- b. The total Float is absorbed and the scheduled completion date is delayed one or more working days because of the Relief Event impact.

Each TIA submitted by Developer shall consist of the following steps or elements:

- a. Establish the status of the Facility Segment before the impact by using the most recent schedule update that has the closest data date prior to the event for TIA, or as adjusted by mutual agreement.
- b. Identify the impact event, estimate duration of the impact, determine appropriate logic, and insert the impact activity or fragment of activities into the schedule. Progress the schedule.
- c. Demonstrate any resulting effects from the impact through layouts generated from the scheduling software. Filter activities to show added or modified Schedule Activities and Schedule Activities impacted from changes. Note any other changes made to the schedule including modifications to the calendars or constraints.
- d. If the current schedule update is revised subsequent to submittal of a time impact analysis but prior to its acceptance, Developer shall promptly indicate, in writing, to TxDOT the need for any modification to its time impact analysis.

Developer shall submit the following with each TIA Submittal:

- a. A narrative report which:
 - Identifies the schedule update(s) used for analysis.
 - Describes the procedures used to analyze schedule impacts, including:
 - Additions, deletions, or modification to Schedule Activities and or fragments
 - Modifications to the calendars or constraints
 - Modifications to relationships
 - Describes the impact or potential impact by comparing Work prior to the impact and Work affected or predicted to be affected after the impact.
 - Describe mitigation efforts taken to date.
 - Describe potential resolutions to mitigate or avoid impact.
- b. Schedule layouts in pdf file format. Filter activities to clearly show impacted Schedule Activities and impacts to the Critical Path. Multiple layouts may be required to adequately demonstrate the impact to the Critical Path. At a minimum, provide a layout demonstrating associated Schedule Activities prior to the impact and a layout demonstrating associated Schedule Activities after the impact is inserted and the schedule is progressed.
- c. One electronic copy in native software of the impacted FBS.
- d. Other information or documentation pertinent to the analysis.

Incorporation of TIA activities into the current schedule update Submittal requires TxDOT approval.

2.1.7 Recovery Schedule

If the FBS reflects for two consecutive status update periods a Service Commencement Date either (a) 30 or more days in the aggregate beyond the Service Commencement Deadline or (b) that number of days in

the aggregate beyond the Service Commencement Deadline equal to or greater than five percent of the days remaining until Final Acceptance, then the next schedule update shall include a recovery schedule demonstrating the proposed plan to regain lost schedule progress and to achieve Final Acceptance of the affected Facility Segment by the specified date.

If the FBS-3+ schedule performance index values of the Facility Construction scope falls below 0.65 with negative trending for 4 consecutive update periods, TxDOT has the option of requiring Developer to resource load construction activities and perform a resource analysis of the required work force for construction-related activities to support the work plan. Facility resources shall be assessed for a period of 12 months following notification from TxDOT to provide such analysis. Planned resources shall be incorporated into the FBS per the following requirements:

- a. Provide a list of crews with associated labor and equipment resources to TxDOT with the schedule submittal.
- b. Define crews as a Labor Resource Type and assign to appropriate activities.
- c. Provide TxDOT with a definition, the composition of and production rate for each crew type.
- d. Do not include any costs for labor resources and do not calculate cost from units (price/unit = \$0.00).
- e. The “quantity” assigned to each Schedule Activity shall represent the estimated efforts in place for the Schedule Activity value.

2.1.8 Operations, Maintenance and Renewal Schedule (Renewal Work Schedule)

Developer shall assemble a separate CPM schedule to coordinate, manage and construct maintenance activities and Renewal Work. The Renewal Work Schedule shall be sufficiently detailed to indicate the timing of periodic maintenance activities, rehabilitation activities and other Renewal Work, planned Capacity Improvements, and planned Upgrades, and shall be consistent with the requirements contained in Sections 19 (Maintenance) and 22 (Operations) of the Technical Provisions.

In addition to the annual submission of a revised Renewal Work Schedule as required by Section 8.6.3 of the FA, during periods of major maintenance, Renewal Work, or Capacity Improvements, Developer shall submit to TxDOT Renewal Work Schedule updates monthly from no later than 90 Days prior to the commencement of any major maintenance, Renewal Work, or Capacity Improvement and ending at final completion or, if applicable, Final Acceptance of the Work of any major maintenance, Renewal Work or Capacity Improvement.

The Renewal Work Schedule shall be developed utilizing the WBS and conform to the Facility Baseline Schedule requirement or as approved by TxDOT.

A Renewal Work Schedule narrative shall accompany any schedule Submittal describing the schedule

update. The narrative shall meet the requirements of Section 2.1.4.2 above (Facility Status Schedule Update Narrative).

The Renewal Work Schedule shall be updated as planned projects are identified and defined.

2.1.9 Document Management

Replace Section 2.1.2 of Book 3 with the following:

Developer shall establish and maintain an electronic document management system (EDMS) to store, catalog, and retrieve all Facility-related documents using the applicable control section job (CSJ) numbers. Record retention shall comply with the requirements of Section 22.1.3 of the FA, and all record documents shall be provided to TxDOT at the time of the expiration or earlier termination of the FA.

Unless otherwise directed by TxDOT, Patron Confidential Information obtained by Developer shall meet the requirements of Attachment 2-4 of the Technical Provisions, Toll Operations Document Retention Schedule.

Maintenance records shall utilize the same format as TxDOT utilizes for its statewide asset inventory and condition assessments and shall be capable of being integrated into TxDOT's maintenance management systems.

Construction quality acceptance test results shall be automatically transmitted to TxDOT's I2MS system using TxDOT's extensible markup language (XML) web service. A sample is shown in Attachment 2-5 of the Technical Provisions, I2MS Test Form Fields. Developer shall coordinate with TxDOT to obtain the most current version prior to commencing construction quality acceptance testing. The technician responsible for conducting the construction quality assurance tests and his/her supervisor shall sign to verify completeness and accuracy of the daily test reports and the results of the daily tests shall be provided to TxDOT and the Independent Engineer within 48-hours after test completion.

2.2 Quality Management Plan

To satisfy the FHWA requirements of 23 CFR 637, Developer shall ensure that the Independent Quality Firm (IQF) and its staff will not in any way participate in the production of the Work and will conform to TxDOT's "Quality Assurance Program for CDA / Design-Build Projects with a Capital Maintenance Agreement with Three Optional 5-Year Terms dated August 29, 2017. All Quality Control (QC) will be performed by the Design-Build Contractor personnel responsible only for the production of the Work, and all the Quality Assurance (QA) will solely be performed by the IQF (including accredited external laboratories), under the direction of the CQAM (Design-Build Contractor's Quality Assurance Manager). All the components of the IQF, including the IQFM, will have no responsibilities in the production of the Work and will not be influenced by any production, therefore being totally independent from the production (QC). Acceptance of work, materials, and products can utilize the IQF results, but only when

verified by the Owner Verification Firm (OVF) results.

2.2.1 General Requirements

No additional requirements.

2.2.2 Quality Terminology

No additional requirements.

2.2.3 Quality Management Organization

No additional requirements.

2.2.4 Quality Policy

No additional requirements.

2.2.5 Inspection and Testing

No additional requirements.

2.2.6 Responsibility and Authority of Developer Staff

No additional requirements.

2.2.7 Design Quality Management Plan

No additional requirements.

2.2.7.1 Design Submittals

No additional requirements.

2.2.7.2 Record Drawings and Documentation

Replace the first paragraph of Section 2.2.7.2 of Book 3 with the following:

On or prior to Final Acceptance for each Facility Segment (excluding the TxDOT Works), Developer shall submit to TxDOT a complete set of Record Drawings for such portion. The Record Drawings and Documentation shall be an organized record of complete Plans and supporting calculations and details that actually represent all Elements that Developer constructed. The Record Drawings shall meet all applicable requirements set forth in the FA Documents. Developer shall deliver to TxDOT the Record Drawings in hard copy and native electronic format including dgn files, organized, searchable and free of redundant information.

Developer shall include a signed statement, in accordance with the FA, ensuring that the Record Drawings reflect the constructed Work.

2.2.8 Construction Quality Management Plan

No additional requirements.

2.2.9 Operations Management Plan

No additional requirements.

2.2.10 Maintenance Management Plan

No additional requirements.

2.3 Comprehensive Environmental Protection Plan

No additional requirements.

2.4 Public Information and Communications Plan

No additional requirements.

2.5 Safety Plan

No additional requirements.

2.6 TxDOT-Developer Communications Plan

No additional requirements.

2.7 Right of Way Acquisition Plan

No additional requirements.

2.8 Cost Management Plan

Replace Section 2.8 of Book 3 with the following:

Not applicable.

Incorporate Section 2.9 as follows:

2.9 Requirements for TxDOT Offices, Equipment and Vehicles

Except where noted elsewhere in the FA, at a minimum Developer's Key Personnel and TxDOT shall remain at their respective current locations (8713 and 9001 Airport Freeway, North Richland Hills, TX 76180) for the Term of the FA to facilitate coordination and daily communication. Developer shall, however, be responsible for performing any revisions to either space in order to meet the requirements of this contract including but not limited to size and number of offices. Should one party require a location change other than to obtain more space in order to meet the requirements set forth in this Section 2.9, that party will incur all costs associated with the move. Should the existing space not be suitable to meet the requirements of this Section 2.9, then Developer shall provide suitable office space at another location. Suitable office space for this FA is office space meeting the conditions of this Technical Provision within close proximity to Developer's current location as noted above or adjacent to the Facility within one mile of the Facility ROW. If the current location is suitable, Developer shall extend the lease for the TxDOT project office for the Term of the FA and shall provide the new Independent Engineer office space (i.e.

available for occupancy) within 120 Days of issuance of NTP1 within one mile of the current TxDOT project office. The location, condition, and amenities of the office space for the Independent Engineer are subject to TxDOT's prior written approval.

Developer shall, as part of the project:

- Provide and pay for all office space, facilities, equipment, and services necessary for TxDOT and the Independent Engineer to oversee the Work.
- Maintain the Facility office space for at least 60 Days after the Term of the FA or until otherwise agreed to by TxDOT in writing.
- After the Term of the FA, provide disposal or removal of all facilities and any site restoration needed for the Facility.

The office space and equipment provided by Developer for the Independent Engineer shall be in good and serviceable condition, at least of the same quality as those of Developer's Facility office, at all times. Developer and TxDOT shall participate in a facility condition survey prior to and at the completion of occupancy.

Developer shall provide office space for three Independent Engineer employees and one TxDOT employee per \$100 million in construction cost (minimum four employees) commencing at 120 Days after the date of issuance of NTP1 or NTP1 (3C), as applicable, until the Service Commencement Date of the corresponding Facility Segment. This office space shall be a permanent facility for the term of such construction. The TxDOT office space may be the same space currently occupied by TxDOT for the NTE Segments 1 and 2W project. The office space for the Independent Engineer for this FA shall be a separate office space and not combined with the Independent Engineer for the NTE Segments 1 and 2W project. Calculations of the number of employees shall be rounded up to the next highest integer (i.e. \$320 million/ \$100 million = 3.2, provide space for four employees).

During the Operating Period, Developer shall provide the office space set forth below. From the Service Commencement Date of each Facility Segment, at a minimum, Developer shall provide office space for one TxDOT employee and three Independent Engineer employees. This office space shall be in a permanent facility for the remaining Term of the FA. Should Developer wish to relocate the office space to a different facility during the Term of the FA, Developer shall be responsible for all costs of the relocation of the TxDOT and Independent Engineer including technology that was not previously provided by Developer but is in use at the time of relocation.

From and after the last Service Commencement Date, when Developer's construction activities exceed \$50 million in value, Developer shall provide additional office space to meet the total office space requirements noted below. Any additional office space beyond the minimum requirement during the

Operating Period may be in a temporary facility for the duration of construction activities.

The number of total office spaces from and after the last Service Commencement Date shall be based on the requirements detailed in Table 2-2:

Table 2-2: Office Space Requirements for Work During the Operating Period

Construction Cost	Total Office Space During Operating Period
Minimum requirement for Term of FA, including maintenance and construction activities less than \$50 million	Office space for one TxDOT employee and three Independent Engineer employees
\$50,000,000 to \$99,999,999	Office space for two TxDOT employee space and six Independent Engineer employees
\$100,000,000 to \$149,999,999	Office space for three TxDOT employee space and nine Independent Engineer employees
\$150,000,000 to 199,999,999	Office space for four TxDOT employee space and 12 Independent Engineer employees
Construction value in excess of \$200,000,000	Office space for five TxDOT employee space and 15 Independent Engineer employees

Personal office areas, whether in temporary or permanent facilities, shall be at least 150 square feet. Each office space (i.e. TxDOT space or Independent Engineer space), whether in a temporary or permanent facility, shall include:

- One enclosed conference room at least 200 sq ft
- One lockable enclosed space for storage/filing at least 150 sq ft
- An enclosed inside space for storage of equipment at least 100 sq ft
- A computer/phone equipment room at least 100 sq ft
- One restroom for each six employees that include toilet and sink, or according to local building code, whichever is more stringent
- A combination break and lunch room area at least 400 sq ft
- A reception area at least 200 sq ft

The restroom, conference room, and break and lunch rooms for TxDOT and Independent Engineer personnel shall be separate from each other, the NTE Segments 1 and 2W Independent Engineer’s facilities, and Developer’s facilities. All space requirements are approximate in nature. Facilities that reasonably comply with these requirements will be acceptable.

Developer shall, as part of the Facility:

- Secure a well-graded site that has an access road, a parking area, and building space that meets all local building code requirements.
- Obtain all site permits.
- Provide all utility services.
- Provide a parking area for each facility for the intended number of occupants plus visitor spaces to reasonably accommodate stake holders who may visit the offices for meetings. The parking area shall be reasonably level and have an all-weather surface and all-weather access.
- Provide secure storage of at least 150 sq ft at each facility for storage of small tools and equipment for the exclusive use of TxDOT and the Independent Engineer.
- Provide at least two building entrance/exits for each building, each secured with a door lock plus a dead-bolt lock. TxDOT and Independent Engineer space shall be separated by lockable doors from each other and from Developer's space.
- Ensure that the site and office space meet all access requirements of the Americans with Disabilities Act (ADA), as amended (42 USC §§12101, et seq.).

For the TxDOT and Independent Engineer office space, Developer shall provide and pay for:

- Potable water and sewer service;
- Electricity service and interior overhead lighting that meet OSHA standards and building and electrical code requirements for office space, with minimum electrical circuit capacity of twenty amperes and with at least two duplex electrical receptacles in each personal office area;
- Heating, ventilation, and cooling systems capable of maintaining temperatures between 65 and 70 degrees Fahrenheit in all spaces throughout the year;
- Daily janitorial service (except on Saturdays, Sundays and Holidays), including maintenance of trash containers and trash pickup service;
- Maintenance of the exterior areas, including the access to parking areas, that keeps them neat, clean, in good repair, and safe;
- Exterior security lighting that is automatically activated at low light levels to maintain at least two foot-candles of lighting within the fenced office site;
- 24-hour security patrol service or a silent watchman-type security system;
- Hard-wire 150 megabit (or greater) internet service with access in each personal office area, including monthly service charges; and
- Telephone service with at least one outside line (with voice-mail service) for each personal office area assigned to the office and at least two lines dedicated to fax service. Telephone service and number of outside lines for a reception area shall be in accordance with Good Industry Practice for the number of employees in the office. After installation of the telephone service, TxDOT and the Independent Engineer shall transfer billings for their office telephone service into their

respective names and pay for their own telephone services including local and long distance telephone charges. An ID badge or other type of electronic access system shall be placed at the front door, at all of the doors connected to the front lobby and at the doors connecting the small and large conference rooms to the hallway. Developer will provide badges to TxDOT, the Independent Engineer, and to whomever TxDOT approves in writing.

Developer shall provide, install, and maintain the following equipment, in working order, for the TxDOT and Independent Engineer's office spaces:

Telephones

- At least one touch-tone telephone for each personal office area and conference room, each with a status indicator, access to all outside lines, and conference call capability; and including speakers for the telephones in the enclosed offices and conference rooms.

Copier and Fax Equipment

In addition to the current equipment located at the TxDOT co-location office, Developer shall provide for the Independent Engineer:

- One full-scale plotter
- One high-speed laser computer printer
- One high-speed color printer capable of handling 11x17 prints
- One high-speed color photo copy machine capable of handling 11x17 prints and one facsimile transmission machine

All equipment shall be replaced and updated at least once every five years. A multipurpose piece of equipment capable of meeting multiple parts of the requirements above will be considered to meet the requirements.

Furniture

- One locking desk with three drawers or one desk with a three-drawer locking file cabinet for each employee office or cubicle;
- One office desk chair on wheels for each desk provided;
- One straight-back office guest chair for each desk provided;
- Reception desk and chair, four guest chairs, one coffee table and one end table for the reception area;
- One conference table and chairs of similar quality and quantity as of Developer conference room;
- Break and lunch room furniture including tables and chairs;
- Four 5-drawer lateral filing cabinets (30W min x 19D min) for storage rooms;
- Two full wall, magnetic whiteboards, one full wall pin board and one projection screen in each

conference room; and

- One whiteboard in each employee office minimum size 4 ft x 3 ft.

Premise wiring

- Developer shall provide and install the complete voice/data communications cabling system, which includes but is not limited to the EMT conduit, bridge rings, pull boxes, Category 5e UTP cable, Category 5e RJ-45 UTP receptacles, Category 3 RJ-11 UTP receptacles, receptacle boxes, cover plates, and multi-mode fiber optic cable. All cable shall be routed, terminated, labeled and tested. Voice and data circuits shall be installed in conjunction with the Technology Services Division and TxDOT Department of Information Resources staff.
- Developer shall certify and state supplied components as functional before installation and will bear all responsibility for replacement of parts at work commencement.
- Developer shall prepare test plan and submit before installation, test installed system and supply test results, and will conform to all industry standard testing procedures.
- Developer shall terminate all Category 5e UTP cable in 66M150 punch down blocks for voice cabling and shall terminate all Category 5e UTP data cable in data patch panels within the wiring closet.
- Each drop shall contain two data ports with RJ45 connectors and two voice ports with RJ11 connectors.
- Developer shall provide all materials, as needed and required, to complete the installation of the cable plant which shall include all cable, connectors, patch panels, equipment rack(s), patch cables, face plates, punch down blocks, fiber optic cable and other equipment during the Facility duration. Developer shall (at its own expense, except as noted herein) repair it, replace it, and/or otherwise restore it to its original condition within five Business Days after the occurrence of such damage or loss.

Developer shall provide supplies for copy and plotter equipment such as paper, ink, and toner.

If any Developer-provided office space, facility, or equipment is damaged, destroyed, or stolen during the Term, Developer shall (at its own expense, except as noted herein) repair it, replace it, and/or otherwise restore it to its original condition within five Business Days after the occurrence of such damage or loss. However, TxDOT will reimburse Developer for the actual, reasonable, and documented costs of the repair, replacement, and/or restoration of any office space, facility, or equipment for any loss or damage caused as a direct result of willful misconduct of TxDOT personnel or the Independent Engineer's personnel.

3 PUBLIC INFORMATION AND COMMUNICATIONS

3.1 General Requirements

Supplement Section 3.1 of Book 3 with the following:

Developer shall coordinate all public information communication plans with ongoing TxDOT public information efforts to ensure a consistent message is being distributed to the regional customer base.

3.2 Administrative Requirements

No additional requirements.

3.2.1 Public Information and Communications Plan

Supplement Section 3.2.1 of Book 3 with the following:

Public liaison

- Conduct media and other group tours of the Facility at appropriate times and stages.

Copies of such material shall be provided to TxDOT at least three Business Days prior to dissemination to the media.

3.2.2 Public Information Coordinator

No additional requirements.

3.2.3 Public Information Office

Replace Section 3.2.3 of Book 3 with the following:

Developer shall maintain a public information office during the DB Phase and during major Renewal Work during the Operating Period. This office shall serve as the primary business location for the Public Information Coordinator and shall be located at a site convenient to the Facility. The public information office shall facilitate the exchange of information between Developer and the public and by providing a centralized location for residents and other Customer Groups to obtain information on the Facility, including Facility maps and plans, alternative routes, lane closures, construction updates, community impacts, and commute options.

The normal business hours of operation for the public information office shall be as follows.

- Periods during which major construction is taking place up to the last Service Commencement for the Facility and during major renewal construction activities, including but not limited to pavement repairs or overlays, bridge maintenance, maintenance of ITS infrastructure, and lighting repair:

Monday – Friday 7:30 am – 6:00 pm

Saturday	9:00 am – 12:00 noon
Sunday	Closed

Developer shall extend hours of operation to appropriately service Customer Groups.

Developer shall be responsible for providing a location capable of hosting community meetings when necessary.

In addition to the services listed above, Developer shall provide a 24-hour telephone hotline, manned during normal business hours of the public information office, with a recorded message describing Emergency procedures after hours.

3.2.4 Customer Groups

No additional requirements.

3.2.5 Public Meetings

Supplement Section 3.2.5 of Book 3 with the following:

The frequency of public meetings is to be addressed in Developer’s PICP and will increase or decrease as needs arise to better inform the Customer Groups. Developer shall propose to TxDOT, for its approval, a schedule of public meetings and then conduct the public meetings that, at a minimum, will address Facility construction and Facility operations and maintenance.

3.2.6 Meeting Minutes

No additional requirements.

3.2.7 Emergency Event Communications

No additional requirements.

3.2.7.1 Lane Closures

No additional requirements.

3.2.8 Disseminating Public Information

No additional requirements.

4 ENVIRONMENTAL

4.1 General Requirements

Supplement Section 4.1 of Book 3 with the following:

The Comprehensive Environmental Protection Program shall effectively demonstrate in detail the Developer's knowledge of all applicable Facility-specific Environmental Approvals, issues, and commitments and applicable Environmental Laws as set forth in the Technical Provisions, and shall describe the processes that will be followed during the course of the Work to comply with those Environmental Approvals, issues, and commitments and Laws, as well as the documentation required to validate compliance.

The costs of all field laboratory and consulting work, including but not limited to phases II to III environmental site assessments related to Hazardous Materials, will be considered part of the Hazardous Materials Allowance or Segment 3C Hazardous Materials Allowance, as applicable. In no event shall any Phase I Hazardous Materials investigation cost be included in the Hazardous Materials Allowance or Segment 3C Hazardous Materials Allowance.

4.2 Environmental Approvals

No U.S. Army Corps of Engineers approved Section 404 jurisdictional determination of the Waters of the US, including wetlands limits, has been provided for the Segment 3C Facility Segment. Figure 4, Environmental Resource Map included in the approved March 2012 Environmental Assessment (EA) for Interstate Highway 35W from state Highway 114 to Interstate Highway 820, identifies preliminary jurisdictional limits of Waters of the US, including wetlands. Those preliminary jurisdictional limits are considered in the Segment 3C Facility Segment schematics. During the detailed Design Phase of the Segment 3C Facility Segment the Developer shall coordinate with the U.S. Army Corps of Engineers to obtain Section 404 permit authorizations for unavoidable impacts to jurisdictional Water of the US, including wetlands. If the U.S. Army Corps of Engineers requires any significant deviation from the preliminary jurisdictional Waters of the US, including wetlands limits set forth in the approved March 2012 EA Figure 4, or requires additional avoidance, minimization and/or mitigation measures, then the Developer shall comply with the same and in such an event shall be entitled to claim a Compensation Event or Relief Event.

4.2.1 New Environmental Approvals and Amended TxDOT-Provided Approvals

Supplement Section 4.2.1 of Book 3 with the following:

TxDOT-Provided Approvals, included in the Reference Information Documents (RID), are the following:

- NEPA Approval for Interstate Highway 35W from Interstate Highway 820 to Interstate Highway 30 (the South Segment)
- NEPA Approval for Interstate Highway 35W from State Highway 114 to Interstate Highway 820 (the North Segment)
- NEPA Approval for Interstate Highway 820 from Interstate Highway 35W to the State Highway 121/State Highway 183 (the Segment 1)

4.2.2 Responsibilities Regarding Environmental Studies

No additional requirements.

4.2.3 TxDOT Review and Approval of Developer Submissions

No additional requirements.

4.3 Comprehensive Environmental Protection Program (CEPP)

Replace the first paragraph of Section 4.3 of Book 3 with the following:

As part of the FMP, Developer shall develop and implement a Comprehensive Environmental Protection Program, applicable throughout the Term of the FA to establish the approach, requirements and procedures to be employed to protect the environment. All component parts shall reflect in order of priority: impact avoidance, minimization and as last resort, compensatory mitigation. The CEPP shall satisfy applicable FHWA, TxDOT and resource agency requirements, including those detailed as commitments in any Environmental Approvals. Prior to commencing Design Work for the Segment 3C Facility Segment, Developer shall submit to TxDOT and obtain TxDOT's approval of an update to the portions of the CEPP that relate to the Work for the Segment 3C Facility Segment to take such Work into account.

4.3.1 Environmental Management System (EMS)

Supplement Section 4.3.1 of Book 3 with the following:

The EMS shall establish a schedule for periodic CEPP review to ensure the CEPP is up to date. The EMS shall provide a means to track the reviews and results. At a minimum, the EMS shall require documents in the following list to be on file at the Facility office and available at any time for TxDOT review:

- CEPP component parts;
- Weekly Environmental Monitoring Reports;
- Investigative Work plans, Site Investigation Reports. and remedial action plans as necessary for Hazardous Material discovery/remediation;
- Wetlands delineations and appropriate Section 404 and 408 permit applications;

- Mitigation or resource monitoring reports, as required by resource-specific mitigation plans;
- Designs for wetland and floodplain mitigation;
- TPDES Construction General Permit (TXR150000), Notice of Intent;
- TPDES Construction General Permit (TXR 150000), Notice of Termination for Work completed;
- Storm Water Pollution Prevention Plan (SW3P) and amendments, as required, to reflect Facility development and staging, including off-site plans, controls and reporting from borrow sites, waste sites, and plant location sites;
- Completed permit applications and permits as issued;
- Pre-construction inspection report;
- Training documentation;
- Developer’s final noise analysis; and
- Environmental Permits, Issues, and Commitments (EPIC) Sheets.

4.3.2 Environmental Compliance and Mitigation Plan (ECMP)

- **Traffic Noise**

Replace the text under the bullet titled “Traffic Noise” in Section 4.3.2 of Book 3 with the following:

Developer shall document how it will address traffic noise mitigation. The documentation at a minimum shall include:

- Process for performing noise mitigation measures as identified and discussed in the NEPA Approvals, Environmental Commitments and schematic drawings as shown in the Initial Mandatory Scope or Mandatory Scope Schematic, TxDOT Works Design, and Approved NEPA Schematics,
- Process for performing noise mitigation measures determined throughout the life of the Facility, and
- Process to handle changes that may occur to proposed permanent noise mitigation in the approved NEPA document and schematic drawings as shown in the Initial Mandatory Scope or Mandatory Scope Schematic, TxDOT Works Design, and Approved NEPA Schematics.

Developer shall be responsible for implementing all noise mitigation measures as prescribed in TxDOT-Provided Approvals. Developer acknowledges that any noise mitigation measures shown in the Initial Mandatory Scope or Mandatory Scope Schematics are preliminary and may require amending to comply with the TxDOT-Provided Approvals. Any such amendments by Developer shall be submitted by

Developer to TxDOT for review and approval.

Developer shall be responsible for public notification and involvement per *TxDOT Guidelines for Analysis and Abatement of Highway Traffic Noise, April 2011* and in accordance with Section 3 of the Technical Provisions. Developer shall allow 15 Days for adjacent affected property comments after each traffic noise workshop.

Developer shall be responsible for all coordination with adjacent property owners and Governmental Entities necessary to obtain all such amendments to TxDOT-Provided Approvals and for ensuring compliance with the conditions and schedules set forth in the amendment of any TxDOT-Provided Approvals.

- **Cultural Resource Studies**

Replace the second paragraph of the bullet titled “Cultural Resource Studies” in Section 4.3.2 of Book 3 with the following:

Subsequent to issuance of NTP1 or NTP1 (3C), as applicable, Developer shall be responsible for performing any necessary cultural resource surveys, evaluations, testing, and mitigation in those areas outside of the Facility ROW shown on the Approved NEPA Schematics, as defined in the NEPA Approval and within the area of potential effects. Developer shall coordinate all necessary Antiquities Permits through TxDOT. Antiquities Permits shall be obtained from the Texas Historical Commission (THC) for archeological surveys, testing, monitoring, and data recovery.

4.3.3 Environmental Protection Training Plan (EPTP)

No additional requirements.

4.3.3.1 EPTP Scope and Content

Replace the seventh bullet of Section 4.3.3.1 of Book 3 with the following:

- BMPs for environmental compliance, including pollution prevention, erosion, sedimentation, post construction controls, and dust control measures to maintain water and air quality.

4.3.4 EPTP Participation

Supplement Section 4.3.4 of Book 3 with the following:

Developer shall require all non-administrative employees to participate in the EPTP and shall keep accurate records documenting attendance, as well as materials presented.

In addition to English, the workers must be provided the opportunity to receive their training and training materials in Spanish.

4.3.4.1 EPTP Schedule

Supplement Section 4.3.4.1 of Book 3 with the following:

Developer shall submit to TxDOT for review and approval in its good faith discretion, course outlines containing learning objectives designed to achieve stated goals and suggested staff attendance for all anticipated training requirements through the Term of the FA.

4.3.5 Hazardous Materials Management Plan (HMMP)

No additional requirements.

Incorporate Section 4.3.5.1 as follows:

4.3.5.1 Investigative Work Plans (IWP) and Site Investigation Reports (SIR)

If Hazardous Materials are encountered within any of the Facility ROW or Additional Properties used as Developer's staging area, field office site, plant sites, borrow site, or stockpile location, Developer shall prepare an investigation work plan that addresses the methods, techniques, and analytical testing requirements to adequately characterize the extent of the contaminated media (soil and/or groundwater) potentially impacting the Facility. Developer shall locate and assess the likely source of contamination.

Developer shall cause a Registered Professional Engineer and other qualified professionals, as needed, to prepare the IWP and other necessary reports in accordance with applicable, relevant or appropriate Laws and guidance.

Upon satisfactorily completing the investigative work, Developer shall summarize the findings within a Site Investigation Report and make recommendations regarding potential response actions necessary for Facility development. Developer shall take Hazardous Materials contamination into account during all subsequent phases of Facility development, including Additional Properties negotiation and acquisition, property management, design, and construction.

The Site Investigation Report shall address the characterization of the impacted area; sampling efforts and findings; opportunities to avoid the contamination by adjusting the design; level of response action warranted if the contamination cannot be avoided; feasibility of initiating response actions prior to construction; pursuit of cost-reimbursement from responsible parties; the need for completing response actions concurrent with construction and nature of any special specifications and provisions necessary for incorporation into the Facility.

Developer may initiate a preventative or corrective action after TxDOT review and approval. Developer acknowledges that TxDOT is required to receive approval of the Site Investigation Report from the various federal and State agencies and agrees to cooperate fully as required.

4.3.6 Communication Plan (CP)

No additional requirements.

4.3.7 Construction Monitoring Plan (CMP)

Supplement Section 4.3.7 of Book 3 with the following:

Prior to NTP2 or NTP2 (3C), as applicable, Developer shall inspect existing facilities, structures, and environmentally sensitive areas in the vicinity of the Site of the applicable Facility Segment. The Site inspection shall document the pre-construction condition of vegetation, streets, sidewalks, landscaping, residential and commercial property, creeks, storm drainage and infrastructure that may be affected by the Facility. The purpose of the inspection is to provide a point of reference to ensure any area affected by the Work is restored to its pre-construction condition. Developer shall fully document the inspection with a report that shall include, among other things, photographs, sketches, maps, and narratives clearly depicting the pre-construction Site condition.

The inspection shall include the Municipal Separate Storm Sewer System (MS4) located within and adjacent to the Site. In addition to the purpose referenced in the previous paragraph, the purpose of this aspect of the inspection is to document pre-existing drainage issues/problems that could later result in a fine or penalty imposed by a Governmental Entity or other entity with jurisdiction over the MS4.

Following construction of the Segment 3A and 3B Facility Segments, and following construction of the Segment 3C Facility Segment, Developer shall conduct a yearly inspection to monitor the existing facilities, structures and environmentally sensitive areas in the vicinity of the Site and repair to its pre-construction condition any of the above mentioned elements except to the extent that such element is subject to the TxDOT warranties described in Section 25.7.2 of the FA.

4.3.8 Recycling Plan

No additional requirements.

4.4 Environmental Personnel

No additional requirements.

4.4.1 Environmental Compliance Manager (ECM)

Supplement Section 4.4.1 of Book 3 with the following:

The ECM shall be an employee of Developer. Developer shall not have the ability to relieve the ECM of his or her duty without the written consent of TxDOT. Should Developer desire to replace the ECM, Developer shall submit the resume of a replacement candidate at the time of the request seeking TxDOT approval for the change. Should Developer need to replace the ECM because of the departure of the incumbent ECM, Developer shall submit the resume of a replacement candidate within 30 Days of the

ECM's departure. Pending the replacement of the incumbent Environmental Compliance Manager, Developer's Hazardous Materials Manager shall act as an interim Environmental Compliance Manager. In both cases, the replacement candidate shall be available fulltime within 30 Days after delivery of TxDOT's written acceptance.

Qualifications: The ECM shall have at least five years of experience successfully managing environmental compliance of urban freeway construction. The qualifying experience used to evaluate an ECM candidate must include the following experience:

- Developing and managing a storm water pollution prevention plan;
- Developing and managing a hazardous substance and petroleum products management plan;
- Implementing environmental mitigation plans;
- Providing environmental and personal protection training; and
- Monitoring compliance with Section 404 and 408 Permit conditions.

The Environmental Compliance Manager's qualifying experience must demonstrate the ECM is familiar with:

- The scope and terminology of ASTM E 1527-05, *Standard Practice for Environmental Site Assessment Process*,
- Provisions of the TPDES Construction General Permit (TXR 150000), and
- Requirements of Section 404 and 408 permit provisions.

4.4.2 Environmental Training Staff

No additional requirements.

4.4.3 Environmental Compliance Inspectors (ECI)

Supplement Section 4.4.3 of Book 3 with the following:

The Environmental Compliance Inspectors shall have at least one-year operational control experience of Storm Water Pollution Prevention Plan activities.

4.4.4 Cultural Resource Management Personnel

Supplement Section 4.4.4 of Book 3 with the following

The ECM shall designate personnel in the event that a need arises for renewed activities to comply with cultural resources laws.

Qualifications: The Cultural Resource Management Personnel shall meet the certification requirement of TxDOT precertification work category, 2.8.1 - *Surveys, Research and Documentation of Historic*

Buildings, Structures, and Objects, 2.9.1 - Historic Architecture, 2.10.1 - Archeological Surveys, Documentation, Excavations, Testing Reports and Data Recovery Plans, and 2.11.1 - Historical and Archival Research.

4.4.5 Natural Resource Biologist

Replace Section 4.4.5 of Book 3 with the following:

The ECM shall designate a Natural Resource Biologist to provide expertise in monitoring impacts on wildlife and the natural environment during the course of the Work.

Qualifications: The Natural Resource Biologist shall meet the certification requirement of TxDOT precertification work category, 2.6.1 - *Protected Species Determination (Habitat)* and 2.6.3 - *Biological Surveys*.

4.4.6 Water Quality Specialist

Replace Section 4.4.6 of Book 3 with the following:

The ECM shall designate a Water Quality Specialist to provide expertise in permitting delineation, storm-water pollution prevention, and the protection of jurisdictional waters during the course of the Work.

Qualifications: The Water Quality Specialist shall have verifiable experience implementing Storm Water Pollution Prevention Plans and be able to demonstrate a working knowledge of the Texas Pollutant Discharge Elimination System and MS4 permit requirements applicable to the Facility.

The Water Quality Specialist shall meet the certification requirements of TxDOT precertification work category 2.4.1 - *Nationwide Permit*.

4.4.7 Hazardous Materials Manager

Replace Section 4.4.7 of Book 3 with the following:

The ECM shall designate a Hazardous Materials Manager to provide expertise in the safe handling of Hazardous Materials required to perform the Work and those that may be discovered/impacted during the duration of the FA. The Hazardous Materials Manager shall conduct appropriate activities such as the following:

- Schedule and/or conduct training for Developer's employees.
- Verify all employee certifications prior to and required for any handling of Hazardous Materials.
- Maintain records of all incidents involving Hazardous Materials and notify the ECM, TxDOT and appropriate authorities in writing of any such incidents.

Qualifications: The Hazardous Materials Manager shall meet the certification requirements of TxDOT precertification work category 2.123.1 - *Hazardous Materials Initial Site Assessment*, be a qualified professional with 40-hour HAZWOPER certification. In addition, the Hazardous Material Manager shall

have at least five years of experience in similar projects in the following areas:

- Experienced in developing IWPs, SIRs, and remedial action plans or equivalent reports necessary and acceptable to the TCEQ in material discovery and remediation efforts of Hazardous Materials.
- Experienced in TCEQ guidance for the investigation and remediation of Hazardous Materials under the TCEQ *Voluntary Cleanup Program* and *Texas Risk Reduction Program Rules*.

5 THIRD PARTY AGREEMENTS

5.1 General Requirements

TxDOT has existing agreements with local Governmental Entities along the Facility corridor that define the requirements for maintenance and operation of traffic signals, illumination and roadway maintenance in the corridor. These agreements specify the local Governmental Entities responsibilities and TxDOT's responsibilities with respect to the requirements.

For the purpose of the FA, Developer shall assume and execute TxDOT's responsibilities and duties as defined in the current and future agreements. Developer is responsible for providing TxDOT and Governmental Entities with all information necessary for it to fulfill TxDOT's responsibilities and duties under these agreements.

In accordance with current and subsequent agreements requiring TxDOT to reimburse the local Governmental Entity for their role in operating and/or maintaining certain facilities, Developer shall reimburse TxDOT said costs. Developer shall make payment to TxDOT within 30 days from receipt of TxDOT's request for payment.

5.2 Traffic Signals

Traffic signal locations at which TxDOT and the local Governmental Entities have traffic signal agreements that designate the operation and maintenance responsibilities are identified in Table 5-1 below.

Table 5-1 Existing Traffic Signals with Agreements for O&M

Cross Street	Existing or Under Construction	Within the City of	Maintained by
IH35W @ Western Center Blvd	Existing	Fort Worth	City of Fort Worth
IH35W @ Basswood Blvd	Existing	Fort Worth	City of Fort Worth
IH820 @ Mark IV Pkwy	Existing	Fort Worth	City of Fort Worth
IH35W @ Meacham Blvd	Existing	Fort Worth	City of Fort Worth
IH35W @ SH183/NE 28 TH ST	Existing	Fort Worth	City of Fort Worth
IH35W @ Northside Dr./ Yucca Ave.	Existing	Fort Worth	City of Fort Worth
IH35W @ N Tarrant Pkwy	Existing	Fort Worth	City of Fort Worth

Cross Street	Existing or Under Construction	Within the City of	Maintained by
IH35W @ Heritage Trace Pkwy	Existing	Fort Worth	City of Fort Worth
IH35W @ Golden Triangle Blvd	Existing	Fort Worth	City of Fort Worth
IH35W @ SH170	Existing	Fort Worth	City of Fort Worth

Where TxDOT is responsible for and billed for the electrical power costs for the traffic signal systems, Developer shall coordinate with the Utility Owner(s) to have the power services for all traffic signal systems in the Facility limits to be billed directly to the Developer within 90 Days after issuance of NTP2 or NTP2 (3C), as applicable.

Developer shall submit plans and specifications for proposed signal work to the relevant city and shall secure the city's written consent in accordance with the form required by the agreement between TxDOT and the city. The consent shall form part of the Released for Construction Documents.

Developer agrees to allow unconditional access to all traffic signal systems to TxDOT and the local Governmental Entities. Developer agrees to report in writing any issues regarding these traffic signals to all appropriate agencies as soon as the issue is identified.

5.2.1 Red Light Cameras

TxDOT shall have the sole discretion to approve any red light cameras within the corridor. Developer shall forward any red light cameras installation requests directly to TxDOT.

5.3 Roadway Illumination

Where roadway illumination agreements exist, Developer shall execute TxDOT's responsibilities and duties as defined by these agreements. Developer shall coordinate with and provide reasonable accommodations to the relevant third parties (municipalities) requiring access to fulfill the obligations as specified in the agreements.

As required due to reconstruction, Developer shall design and construct Frontage Road illumination where specified in existing roadway illumination agreements or where existing Frontage Roads in the Facility limits are illuminated. The operations and maintenance responsibilities will remain as specified in the existing illumination agreements.

New agreements between TxDOT and the Governmental Entity will be required when a local Governmental Entity requests additional illumination along Frontage Roads within the Facility limits. Developer will be able to review and comment on these illumination agreements and any additional design, construction, operation, and maintenance costs associated with these improvements will be

considered a TxDOT Change.

5.4 Municipal Maintenance Agreements

Where municipal maintenance agreements exist, Developer shall execute TxDOT's responsibilities and duties as defined by these agreements. Developer shall coordinate the necessary arrangements directly with the appropriate local Governmental Entity for additional maintenance or improvements within the local Governmental Entity's jurisdiction if so required by the Work.

5.5 City Fiber and Lighting Agreement

TxDOT and the City of Fort Worth are parties to an Advance Funding Agreement dated February 25, 2016, as amended by Amendment #01 dated July 21, 2017, pursuant to which TxDOT has agreed to construct, install and maintain a 72-strand fiber optic line within a 1.50-inch conduit with long-sweeping 90-degree bends from the North Tarrant County/Denton County line to the SAT 4 building at IH-30, and to construct a continuous lighting system for all segments of the North Tarrant Express Facility.

For the purpose of the FA, Developer shall assume and execute TxDOT's responsibilities and duties as set forth in such agreement and amendment and in accordance with Article I, Section 9 of Change Order No. 005, dated June 1, 2017, between TxDOT and Developer respecting the Facility. Such Change Order includes the fiber optic line and conduit for the Segment 3C Facility Segment. Developer is responsible for providing TxDOT and Governmental Entities with all information necessary for it to fulfill TxDOT's responsibilities and duties under such agreement and amendment.

5.6 Other Affected Third Parties

When Work interfaces with other third party facilities, Developer is responsible for coordinating the Work with all third parties potentially affected by the Work. Developer shall prepare and submit to TxDOT as part of the Facility Management Plan an affected third parties plan that describes how Developer will mitigate the impact of the Work upon potentially impacted third parties.

6 UTILITY ADJUSTMENTS

6.1 General Requirements

Replace Section 6.1 of Book 3 with the following:

A number of existing Utilities are located within or in the vicinity of the Facility ROW, some pursuant to statutory rights and some pursuant to property rights. Certain of those existing Utilities will need to be relocated or otherwise adjusted in order to accommodate the Facility. This Section 6 of the Technical Provisions establishes procedures and requirements for Utility Adjustments including such processes as coordination with Utility Owners, administration of the engineering, construction and other activities necessary for Utility Adjustments, and required documentation. This Section 6 of the Technical Provisions refers to certain TxDOT forms for Developer's use in Utility Adjustments. Copies of those forms are included in Attachment 6-1 of the Technical Provisions, Utility Forms. Except as otherwise provided in this Section 6 of the Technical Provisions or directed by TxDOT, whenever a TxDOT form is provided, Developer shall prepare all forms of the same type using the TxDOT form.

Developer shall cause all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Facility for the Mandatory Scope. Some Utility Adjustments may be performed by the Utility Owner with its own forces and/or contractors and consultants (i.e., Owner-Managed); all others shall be performed by Developer with its own forces and/or Contractors and consultants subject to any approval rights required by the Utility Owner for those working on its facilities (i.e., Developer-Managed). The allocation of responsibility for the Utility Adjustment Work between Developer and the Utility Owners shall be specified in the Utility Agreements.

Developer's obligations regarding reimbursement to Utility Owners for eligible costs of Utility Adjustment Work, and Developer's obligations regarding the accommodation of Utilities from and after the Service Commencement Date, are set forth in Section 7.5.4 and Section 8.1.5 of the FA.

This Section 6 of the Technical Provisions does not address Utility services to the Facility. Utility services to the Facility shall be the subject of separate agreements between Developer and Utility Owners.

6.1.1 When Utility Adjustment is Required

Supplement Section 6.1.1 of Book 3 with the following:

Developer is responsible to coordinate and work collaboratively with TxDOT in accordance with Section 11.1.1 of the FA and the Utility Owner where a Utility Adjustment crosses at the north and south limits of the Segment 3B Facility Segment with the Segment 3A Facility Segment and the Segment 3C Facility Segment. See Section 1.1.3 of the Technical Provisions for additional details regarding the construction interface. Developer shall be responsible for Utility Adjustments within and including the limits of the Segment 3A Facility Segment, Segment 3C Facility Segment, 3A Ultimate Capacity Improvement, 3B

Ultimate Capacity Improvement and 3C Ultimate Capacity Improvement, and all other Adjustments as determined in the coordination plan prepared in accordance with Section 11.1.1 of the FA.

6.1.2 Certain Components of the Utility Adjustment Work

No additional requirements.

6.1.2.1 Coordination

Replace Section 6.1.2.1 of Book 3 with the following:

Developer shall communicate, cooperate, and coordinate with TxDOT, the Utility Owners and potentially affected third parties, as necessary for performance of the Utility Adjustment Work. Developer shall be responsible for preparing (unless prepared by the Utility Owner) and securing execution (by Developer and the Utility Owner) of all necessary Utility Agreements.

All executed Utility Agreements between Developer and Utility Owners must be approved by TxDOT prior to taking effect.

6.1.2.2 Betterments

No additional requirements.

6.1.2.3 Protection in Place

No additional requirements.

6.1.2.4 Abandonment and Removal

No additional requirements.

6.1.2.5 Service Lines and Utility Appurtenances

No additional requirements.

6.1.2.6 Early Adjustments

No additional requirements.

6.1.3 Reserved

6.1.4 Agreements Between Developer and Utility Owners

No additional requirements.

6.1.4.1 Master Utility Adjustment Agreements (MUAA)

Replace Section 6.1.4.1 of Book 3 with the following:

Developer shall enter into one or more MUAs with each affected Utility Owner to define the design, material, construction, inspection, and acceptance standards and procedures necessary to complete Utility Adjustments, as well as to define Developer's and the Utility Owner's respective responsibilities for

Utility Adjustment costs and Utility Adjustment activities such as material procurement, construction, inspection, and acceptance. A MUAA may address more than one Utility Adjustment for the same Utility Owner. Additional Utility Adjustments may be added to an existing MUAA by a Utility Adjustment Agreement Amendment (UAAA).

Developer shall prepare each MUAA using the standard form of *TxDOT Master Utility Adjustment Agreement (Owner-Managed)* or *TxDOT Master Utility Adjustment Agreement (Developer-Managed)*, Attachment 6-1 of the Technical Provisions, Utility Forms. Developer shall not modify the standard forms except by approval of a Deviation pursuant to Section 7.5.2 of the FA.

On issuance of NTP1 or NTP1 (3C), as applicable, Developer shall begin negotiations with each affected Utility Owner to reach agreement on one or more MUAAs. Developer shall finalize the necessary MUAA(s) with each affected Utility Owner within a reasonable time period after issuance of NTP1 or NTP1 (3C), as applicable. Developer shall include any proposed changes to a standard form (other than approved Deviations as described in the preceding paragraph and filling in blanks specific to a particular Utility Owner) in a Utility Owner-specific addendum. Each MUAA (including the Utility Adjustment Plans attached thereto) shall be subject to TxDOT review and approval as part of a Utility Assembly.

6.1.4.2 Utility Adjustment Agreement Amendments

Replace the second paragraph of Section 6.1.4.2 of Book 3 with the following:

Each UAAA (including any Utility Adjustment Plans attached thereto) shall be subject to TxDOT's approval as part of a Supplemental Utility Assembly. Except as otherwise directed by TxDOT or provided in an applicable Utility Agreement, Developer shall prepare all UAAAs using the standard form included in Attachment 6-1 of the Technical Provisions, Utility Forms. Developer shall not modify the standard forms except by approval of a Deviation pursuant to Section 7.5.2 of the FA. Developer shall include any proposed changes to a standard form (other than approved Deviations and filling in blanks specific to a particular Utility Owner) in a Utility Owner-specific addendum.

6.1.5 Recordkeeping

No additional requirements.

6.2 Administrative Requirements

No additional requirements.

6.2.1 Standards

Supplement Section 6.2.1 of Book 3 with the following:

When there is no viable alternative and upon TxDOT approval, existing Utilities that cross the ROW will be allowed to remain in place below proposed bridges without being relocated as long as UAR depth

requirements are met, there is no conflict with bridge bent construction and the Utility agrees to the location. With TxDOT's approval, communication lines will be allowed to be placed beneath proposed Frontage Road (excluding manholes/handholes) and/or cross connecting side street pavement if necessary to avoid the Utility owner from purchasing additional ROW or easements. Utilities or sections of Utilities not affected by construction of the Initial Mandatory Scope, whether in whole or in part, do not have to be relocated when the location accommodation meets the requirements of the UAR.

6.2.2 Communications

No additional requirements.

6.2.2.1 Communication with Utility Owners: Meetings and Correspondence

Replace the third paragraph of Section 6.2.2.1 of Book 3 with the following.

Before distribution of any mass mailings to Utility Owners, Developer shall submit to TxDOT, 21 Days in advance of distribution, for its review and comment the form, content, and addressees of any such mass mailings. For purposes of this Section 6.2.2.1 of the Technical Provisions, the term "mass mailing" means correspondence that is sent to 50 percent or more of Utility Owners within a three-week time period, and contains substantially the same content with respect to each Utility Owner.

6.2.3 Utility Adjustment Team

No additional requirements.

6.2.4 Real Property Matters

No additional requirements.

6.2.4.1 Documentation of Existing Utility Property Interests -- Affidavits

Replace Section 6.2.4.1 of Book 3 with the following:

For each Existing Utility Property Interest within the Facility ROW claimed by any Utility Owner, Developer shall include an Affidavit of Property Interest in the applicable Utility Assembly, with documentation of the Existing Utility Property Interest (e.g., an easement deed) attached. Any such claim shall be subject to TxDOT's approval as part of a Utility Assembly review. Except as otherwise directed by TxDOT, Developer shall prepare all Affidavits of Property Interest using the standard forms included in the attachment as noted in these Technical Provisions.

6.2.4.2 Acquisition of Replacement Utility Property Interests

No additional requirements.

6.2.4.3 Relinquishment of Existing Utility Property Interests

No additional requirements.

6.2.4.4 Quitclaim Deeds

Replace Section 6.2.4.4 of Book 3 with the following:

Except as otherwise directed by TxDOT, Developer shall prepare a Quitclaim Deed for each relinquishment of an Existing Utility Property Interest using TxDOT's standard form included in the attachment as noted in these Technical Provisions. Each Quitclaim Deed shall be subject to TxDOT's approval as part of a Utility Assembly.

Developer understands and expects that a Utility Owner will not relinquish any Existing Utility Property Interest until after the Utility Adjustment has been accepted by the Utility Owner in its new location. Accordingly, instead of an executed Quitclaim Deed, the Utility Assembly for such a Utility Adjustment shall include a letter signed by the Utility Owner's authorized representative confirming that the interest will be quitclaimed upon completion of the Utility Adjustment, and a copy of the unsigned Quitclaim Deed. In these cases, Developer shall obtain the executed Quitclaim Deed upon completion of the Utility Adjustment.

6.2.4.5 Utility Joint Use Acknowledgements

No additional requirements.

6.2.4.6 Documentation Requirements

No additional requirements.

Replace the heading Section 6.3 Design of Book 3 with Section 6.3 Design Requirements.

6.3 Design Requirements

No additional requirements.

6.3.1 Developer's Responsibility for Utility Identification

Replace Section 6.3.1 of Book 3 with the following:

Developer bears sole responsibility for ascertaining, at its own expense, all pertinent details of Utilities located within the Facility ROW or otherwise affected by the Facility, whether located on private property or within an existing public ROW, and including all Service Lines.

Developer shall prepare and submit to TxDOT, a Utility Strip Map showing the information obtained and/or confirmed pursuant to this Section 6.3.1. Developer's Utility Strip Map shall show in plan view all Utilities within the Facility ROW or otherwise impacted by the Facility, in each case detailing the type of Utility facility (communication, gas, oil, water, etc.) and the Utility Owner's name and contact information. The scale of the Utility Strip Map shall be 1"=200'. Developer shall update the information provided in the Utility Strip Map with SUE data and shall submit the same to TxDOT in accordance with the Facility Management Plan.

6.3.2 Technical Criteria and Performance Standards

Delete “, whether furnished by Developer or by the Utility Owner,” in the first sentence.

6.3.3 Utility Adjustment Concept Plans

No additional requirements.

6.3.4 Utility Adjustment Plans

Replace Section 6.3.4 of Book 3 with the following:

Developer shall submit Utility Adjustment Plans after TxDOT has provided Developer with Utility Adjustment Concept Plan review comments. Utility Adjustment Plans, whether furnished by Developer or by the Utility Owner, shall be signed and sealed by a Texas Registered (or Licensed) Professional Engineer (PE).

6.3.4.1 Plans Prepared by Developer

No additional requirements.

6.3.4.2 Plans Prepared by the Utility Owner

No additional requirements.

6.3.4.3 Design Documents

Replace the first sentence of Section 6.3.4.3 of Book 3 with the following:

Developer shall ensure that each proposed Utility Adjustment is shown in the Record Drawings, regardless of whether the Utility Adjustment Plans are prepared by Developer or by the Utility Owner.

6.3.4.4 Certain Requirements for Underground Utilities

No additional requirements.

6.3.4.5 Utility Assemblies

Replace the fourth paragraph of Section 6.3.4.5 of Book 3 with the following:

Supplemental Utility Assemblies. For each UAAA, Developer shall prepare a supplement to the Utility Assembly for the relevant initial MUAA (a Supplemental Utility Assembly), covering all Utility Adjustments addressed in the UAAA. The Supplemental Utility Assembly shall contain a transmittal memo, Utility Assembly Checklist, proposed UAAA cost estimate, a proposed UAAA which has been executed by the Utility Owner and Developer (one original in each of the two original Supplemental Utility Assemblies), including all required attachments, and applicable revisions to the Utility Adjustment Plans, as well as Utility Joint Use Acknowledgement(s) and Affidavit(s) of Property Interest, if applicable. The transmittal memo shall briefly describe the desired amendment and explain why the amendment is necessary.

6.4 Construction

No additional requirements.

6.4.1 Reserved

No additional requirements.

6.4.2 General Construction Criteria

No additional requirements.

6.4.3 Inspection of Utility Owner Construction

No additional requirements.

6.4.4 Scheduling Utility Adjustment Work

Replace Section 6.4.4 of Book 3 with the following:

The Utility Adjustment Work (other than construction) may begin at any time following issuance of NTP1 or NTP1 (3C), as applicable, subject to satisfaction of all conditions precedent. Refer to Section 7.6.2 of the FA for the conditions to commencement of Utility Adjustment Construction Work by Developer. Developer shall not arrange for any Utility Owner to begin any demolition, removal, or other construction work for any Utility Adjustment until all of the following conditions are satisfied:

1. The Utility Adjustment is covered by an executed Utility Agreement (and any conditions to commencement of such activities that are included in the Utility Agreement have been satisfied);
2. Availability and access to affected Replacement Utility Property Interests have been obtained by the Utility Owner (and provided to Developer, if applicable);
3. If any part of the Utility Adjustment construction work will affect the Facility ROW, availability and access to that portion of the Facility ROW has been obtained in accordance with the applicable requirements of the FA Documents;
4. If applicable, the Alternate Procedure List has been approved by FHWA, and either (a) the affected Utility is on the approved Alternate Procedure List, as supplemented, or (b) the Utility Owner is on the approved Alternate Procedure List, as supplemented;
5. The review and comment process has been completed and required approvals have been obtained for the Utility Assembly covering the Utility Adjustment;
6. All Governmental Approvals necessary for the Utility Adjustment construction have been obtained, and any pre-construction requirements contained in those Governmental Approvals have been satisfied; and
7. All other conditions to that work stated in the FA Documents have been satisfied.

6.4.5 Standard of Care Regarding Utilities

No additional requirements.

6.4.6 Emergency Procedures

No additional requirements.

6.4.7 Utility Adjustment Field Modifications

Supplement Section 6.4.7 of Book 3 with the following:

If deviation of the actual construction from the drawings is within a 2-foot horizontal or 1-foot vertical range or less, it shall not be considered a Field Change and will just be included in the As-Built Plans, provided that the deviation does not constitute a design exception from the specifications contained in the Technical Provisions and applicable standards.

6.4.8 Switch Over to New Facilities

No additional requirements.

6.4.9 Record Drawings

No additional requirements.

6.4.10 Maintenance of Utility Service

No additional requirements.

6.4.11 Traffic Control

Replace Section 6.4.11 of Book 3 with the following:

Developer shall be responsible for, and the Construction Traffic Management Plan shall cover, all traffic control made necessary by or for Utility Adjustment Work, whether performed by Developer or by the Utility Owner. Developer shall ensure that traffic control for Adjustments will be coordinated with, and subject to approval by, the local agency(ies) with jurisdiction. Developer shall ensure that traffic control will comply with the guidelines of the TMUTCD and of Section 18 (Traffic Control).

6.5 Deliverables

Replace Section 6.5 of Book 3 with the following:

Developer shall time all Submittals described in this section to meet the Facility Schedule, taking into account TxDOT's applicable review and response times designated in this Section 6 of the Technical Provisions, or if not stated therein, then as stated in Section 6.3 of the FA. All deliverables shall conform to the standards required in the Facility Management Plan.

6.5.1 Maximum Number of Submittals

Replace Section 6.5.1 of Book 3 with the following:

Developer shall coordinate all Submittals required pursuant to this Section 6.5 of the Technical Provisions, so as not to overburden TxDOT's staff and consultants.

In each calendar week, Developer shall not submit more than four Submittals, being considered separate Submittals: Utility Assemblies, Supplemental Utility Assemblies, Abbreviated Utility Assemblies, additional items submitted in response to TxDOT comments on a particular Utility Assembly, a Quitclaim Deed, and any other type of Relinquishment document.

Where the number of Submittals exceeds these limits, the submittals shall be considered excess and TxDOT may defer its review of any such excess parcels to a subsequent calendar week (or weeks as necessary).

6.5.2 Developer's Utility Tracking Report

Replace Section 6.5.2 of Book 3 with the following:

Developer shall maintain a Utility Tracking Report in tabular form, listing all Utilities located within the Facility ROW or otherwise potentially affected by the Facility. Developer shall submit the Utility Tracking Report to TxDOT both in native electronic and hard copy formats on a monthly basis. The Utility Tracking Report shall, at a minimum, contain the following information for each utility:

- a) The name of the Utility Owner and a unique tracking number starting with the prefix "Highway U-" followed by a four-digit number starting with 0001 - to be assigned by Developer;
- b) Utility size and type;
- c) Location of the Utility based upon project control datum or by station and offset;
- d) The proposed method of treatment;
- e) State whether the adjustment will be Owner or Developer Managed;
- f) Dates on which the MUAA/UAAA was executed by TxDOT, Utility Owner, Design-Build Contractor, Developer;
- g) Dates on which the UJUA was executed by the Utility Owner and TxDOT;
- h) The Utility Owner's existing right of occupancy of the ROW for each Utility (e.g. UJUA, permit, easement or combination);
- i) Whether any Replacement Utility Property Interest will be necessary;
- j) Estimated cost approved in the MUAA or UAAA;

- k) Amounts and dates of payments made by the Developer to the Utility Owner, listing in each case the type of payment (final, partial or lump sum);
- l) Scheduled start and completion date for construction of each adjustment;
- m) Percent complete of construction; and
- n) Whether any betterment is included in the adjustment.

The Utility Tracking Report shall also include a separate section for Replacement Utility Property Interests listing each necessary Replacement Utility Property Interest with the names of property owners or parcel number(s), Utility Assembly Numbers, status of the acquisition, acquisition cost, and other information as necessary. Developer shall maintain this section of the Utility Tracking Report and submit to TxDOT in the same manner as all other portions of the Utility Tracking Report.

6.5.3 Utility Assembly Submittals

Replace the second paragraph of Section 6.5.3 of Book 3 with the following:

TxDOT will review the Utility Assembly for compliance with the requirements of this Section 6.5.3 of the Technical Provisions, and within ten Business Days will return the Utility Assembly to Developer with the appropriate notations (pursuant to Section 6.3 of the FA) to reflect its responses. Developer shall transmit any TxDOT comments to the Utility Owner, and shall coordinate any modification, review and approval by the Utility Owner and re-submittal to TxDOT, as necessary to resolve all TxDOT comments and/or obtain TxDOT's approval, as applicable. Upon (a) TxDOT's approval of any Utility Assembly components for which TxDOT's approval is required, and (b) completion of the review and comment process for all other Utility Assembly components, TxDOT will sign three originals of any approved UJUA and of any other components of the Utility Assembly for which Section 6 of the Technical Provisions requires TxDOT's signature.

6.5.4 FHWA Alternate Procedure

No additional requirements.

7 RIGHT OF WAY (ROW)

7.1 General Requirements

No additional requirements.

7.2 Administrative Requirements

No additional requirements.

7.2.1 Standards

Supplement Section 7.2.1 of Book 3 with the following:

- *TxDOT GPS Manual*

7.2.2 Software Requirements

No additional requirements.

7.2.3 ROW Acquisition Plan

No additional requirements.

7.2.4 Schedule and Review Procedures

Replace the second paragraph of Section 7.2.4 of Book 3 with the following:

In developing the Facility Schedule, Developer shall incorporate adequate time periods for TxDOT review and approval of Acquisition Packages. TxDOT intends to review the completed Acquisition Packages as expeditiously as possible; however, for the purposes of the Facility Schedule, Developer shall assume that the reviews performed by TxDOT will require ten Business Days for Acquisition Packages that Developer submits as final and complete in accordance with Section 7.3.6 of the Technical Provisions, up to a maximum of 30 Acquisition Packages. Any Submittals that would require TxDOT to review more than 30 Acquisition Packages within any given ten Business Day period shall be considered excess, and TxDOT may defer its review of any such Acquisition Packages to a subsequent ten Business Day period (or periods as necessary). TxDOT will notify Developer of its election to defer any excess Acquisition Packages within ten Business Days after receipt. The balance of Acquisition Packages in excess of 30 will be rolled over to the next ten Business Day period and added to the Acquisition Package Submittals made by Developer in that period. When Developer opts to submit more than one Acquisition Package at any given time, Developer shall indicate the priority of required review in order to meet the Facility Schedule.

7.2.5 Developer's Facility ROW Scope of Services

No additional requirements.

7.2.6 Acquisition Process Summary

No additional requirements.

7.2.7 ROW Personnel Qualifications

Replace the second and third paragraphs of Section 7.2.7 of Book 3 with the following:

Appraisers and appraisal reviewers shall be licensed and certified in the State of Texas and shall have a minimum of five years of experience in appraising real property for eminent domain purposes, including partial taking appraisal, partial taking appraisal review and expert witness testimony. He or she must also have been actively and continuously engaged for at least three years immediately preceding his or her selection for this Facility in appraisal work primarily in Tarrant County and Denton County, Texas, or as approved by TxDOT. The appraisers and the appraisal reviewers shall have separate and distinct duties, and appraisers must be employed by different firms from the appraisal reviewers. Each appraiser shall be required to submit three samples of previous appraisal work prepared for eminent domain purposes. All appraisers preparing and signing appraisals must be approved by TxDOT before performing any appraisals on the Facility. If required by TxDOT, the appraiser will be required to demonstrate his/her skills at expert witness testimony.

Each land planner shall have a minimum of five years of experience in land planning, including experience with expert witness testimony in eminent domain proceedings. He or she must also have been actively and continuously engaged for at least three years immediately preceding his or her selection for this Facility in land planning work primarily in Tarrant County, Texas, or as approved by TxDOT. Developer shall provide a minimum of two land planners to assist appraisers and complete land plans.

7.2.8 Developer Conflict of Interest

No additional requirements.

7.2.9 Meetings

No additional requirements.

7.2.10 Documentation and Reporting

No additional requirements.

7.2.11 Responsibilities of Developer

Replace the second paragraph of Section 7.2.11 of Book 3 with the following:

Developer acknowledges that Developer has incorporated the value of saleable improvements into the Facility ROW costs shown in the Base Case Financial Model and any Base Case Financial Model Updates, and Developer shall concurrently, with conveyance of the real property interest to the State of Texas, and without the necessity of further documentation executed by the State, obtain the rights to said

saleable improvements. Developer shall not be entitled to a credit for any improvements retained by a property owner. Upon conveyance of the real property interest to the State of Texas, Developer shall comply with all applicable Laws with respect to relocation assistance and demolition.

7.2.12 Responsibilities of TxDOT

No additional requirements.

7.2.13 TxDOT Facility Monitor/Reviewer

No additional requirements.

7.3 Pre-Acquisition Activities

No additional requirements.

7.3.1 Facility ROW Surveying and Mapping

Replace Section 7.3.1 of Book 3 with the following:

The Facility ROW map shall be prepared by Developer and submitted to TxDOT for review and approval. The Facility ROW map may be prepared in separate constructible segments established by the logical termini of the Facility. TxDOT shall have 15 Business Days for review of each submitted Facility ROW map, each containing up to a maximum of 30 parcels. Any submittals that would require TxDOT to review more than 30 parcels within any given 15 Business Day period shall be considered excess, and TxDOT may defer its review of any such excess parcels to a subsequent 15 Business Day period (or periods as necessary).

Developer shall prepare all Facility ROW surveying and mapping in accordance with the following supplemental specifications:

1. Developer shall assemble an Acquisition Survey Document Package. The Acquisition Survey Document Package shall include:
 - a) One full size right of way map on paper, Scale 1" = 50' (22" x 34").
 - b) Three half size right of way maps on paper, Scale 1" = 100' (11" x 17").
 - c) One set of folders for each parcel, Parts 1 & 2, etc., would be considered one folder. With one (copy signed and sealed) legal description, sketch, closure sheet, parent tract deed (and bi-section if applicable) secured inside on the right side. Note: just pencil on tab of folder what parcel number and TxDOT Fort Worth District will make the label.
 - d) Three copies (signed and sealed) of each legal and sketch loose inside of folder.
 - e) One separate set (copies) of legal and sketch of each parcel for TxDOT records.
 - f) One separate set (copies) of legal and sketch of each parcel for title company.
 - g) One separate set of originals signed and sealed by RPLS legal and sketch to be kept in mapping files.

h) A CD with DGN master file, map sheets, excel point list and raw data file and/or field notes.

Each map sheet and document page shall have an "as of" date near the lower right hand corner. The parcel plat and parcel description for a given parcel should show identical "as of" dates.

2. The parcel, as shown on the Facility ROW map sheet and plat, shall show all areas of denied access according to the current TxDOT *Access Control Management Manual* or as reviewed and approved by TxDOT.
3. The point of beginning (POB) shall be located on the proposed Facility ROW line and shown in all documents with its centerline (survey baseline) station and offset.
4. The point of commencing (POC), where applicable, shall be a well-defined monument, and shall be tied to the POB by measured bearing and distance. The POC shall not be located on any proposed Facility ROW line, or existing Facility ROW line within the proposed Facility ROW.
5. The centerline (survey baseline) station and offset shall be shown on the Facility ROW map sheets for all significant points along the Facility ROW line such as point of curvature (PC), point of tangency (PT), point of intersection (PI), point of compound curvature (PCC), and point of reverse curvature (PRC), and for property line intersections (PLI) with the Facility ROW line, and for any other monumentation points on the Facility ROW line.
6. The centerline (survey baseline) station and offset shall be shown in the parcel description and parcel plat at the beginning and ending, being the points with the lowest station and the highest station, of each parcel along the proposed Facility ROW line.
7. Facility ROW map sheets shall include all curve data, with the station and coordinates of the PI, and the stations at each end (PC, PT, PRC, PCC), for every centerline (survey baseline) curve on that map sheet.
8. Any existing ROW lines being incorporated into the proposed Facility ROW, including intersecting rights of way, shall be surveyed and monumented (if not previously monumented).
9. All Facility ROW maps (and on the title sheet) and all parcel descriptions (at the end of the description) shall include a notation that identifies the State Plane Coordinate System and UTM zones, datum (NAD83) (HARN) (2002), and the Facility grid-to-surface coordinate adjustment factor.
10. A Facility ROW map title sheet with signature blocks shall be produced for each portion of the Facility. Developer shall sign the Facility ROW map.
11. All Facility ROW maps shall include a control sheet (or sheets), to show the primary survey control points with their location relative to the Facility.
12. The parcel description and parcel plat documents shall all be referenced as parts of the exhibit recorded with the deed, so the pages shall be numbered accordingly. For example, if the parcel description is two pages, the parcel plat is one page, then the first page of the parcel description

is denoted “Page 1 of 3”, the parcel plat is denoted “Page 3 of 3”.

13. Improvements within 100 feet outside of all proposed Facility ROW shall be depicted on the Facility ROW map sheets. All improvements should be current as of the date of the on-the-ground property survey.
14. All visible improvements (buildings and structures) within 25 feet outside of the proposed Facility ROW line shall be located by an “on-the-ground” survey and documented on the Facility ROW map sheets and the parcel plats by measured offset distance from the proposed Facility ROW line. Clearly indicate which distances are surveyed on-the-ground.
15. Calculated points shall be shown by a symbol on the drawing, with their relationship to the found reference points.
16. All property, city, county, abstract, section, and survey lines shall be indicated appropriately. A map legend should clearly define the line styles and symbols used.
17. Upon final submittal from Developer of the Facility ROW documents to TxDOT, Developer shall cause the surveyor to mark on the ground, using permanent and stable monuments as defined in Section 663.17 of the General Rules of Procedures and Practices of the Texas Board of Professional Land Surveying (TBPLS), all significant points along the Facility ROW line, as described above, and all property line intersections with the Facility ROW line. TxDOT requires these monuments to be a ½-inch iron rod, driven just below surface level, capped by a TxDOT-labeled aluminum cap (rod-and-cap monument).
18. Prior to acceptance of the Facility ROW maps and surveys by TxDOT, Developer shall cause a TxDOT Type II monument to be set at all significant points on the Facility ROW line and at intersections with existing Facility ROW lines, replacing monuments as described above (construct according to TxDOT specifications), unless otherwise directed by TxDOT.
19. Developer shall cause a TxDOT Type II monument to be set at all significant points on the Facility ROW line and at intersections with existing Facility ROW lines, replacing monuments as described above, unless otherwise directed by TxDOT. Facility ROW line intersections with property lines shall remain monumented by a ½-inch iron rod with a TxDOT aluminum cap (rod-and-cap monument). To reference all significant points along the centerline (survey baseline), Developer shall set a rod-and-cap monument; and upon completion of the Facility ROW acquisition or as directed by TxDOT, Developer shall replace it with a TxDOT Type II monument, on the final Facility ROW lines, perpendicularly left and right of each significant centerline point, regardless of the relative orientation of the final Facility ROW line.
20. For any required revisions, Developer shall resubmit to TxDOT all documents pertaining to the parcel to reflect the most recent revision date, and shall add a notation on the appropriate documents to state briefly the reason for the revision.
21. Documents shall contain deed references (survey name, abstract number, volume and page or

document number, grantee, and area) for all existing public right of way encountered within the Facility limits. If there is no recorded information found, a note shall state “Based upon our research, there appears to be no recorded vesting deed for the public right of way as shown hereon”.

22. Developer shall cause the surveyor to include the denial of access line on the Facility ROW map sheets and on the parcel plats, as required for controlled access facilities. Developer also shall cause the surveyor to describe the area of denied access in the parcel description and monument on the ground with a ½” iron rod with orange cap stamped “TxDOT ADL” at the limits of the denial of access.
23. The Facility ROW map and each parcel plat shall include a parcel information table containing the areas, expressed in square feet, of the following: 1) the parent ownership as stated in all adjoining record vesting deeds or converted from the stated record acreage in those vesting deeds; 2) the parcel to be acquired as shown on the closure report for that parcel, and; 3) the remainder tract (item 1 minus item 2). If the parcel to be acquired consists of multiple parts, the Facility ROW map shall show the net remainder. The parcel information table shall also contain the areas, expressed in acres, of the parent tract, the parcel to be acquired, and the remainder. This acreage (except stated record) shall be converted from the square footage as contained in the table. A note shall be included on the Facility ROW map and on each parcel plat stating: “The acreage calculated and shown hereon is converted from the square footage shown hereon, and is for informational purposes only.” Parcels with area less than one acre will not require acreage units to also be shown.
24. Within the proposed Facility ROW, all property owned by a city, county, or other local public agency in fee or easement that does not have a vesting deed shall be identified by a parcel number and included on the Facility ROW map. Developer shall cause the surveyor to prepare a parcel description and parcel plat for use as an exhibit in the Facility ROW acquisition (property transfer) documents.
25. Developer shall cause an independent Registered Professional Land Surveyor (RPLS) to review the Acquisition Survey Document Package for consistency as to the information delineated thereon and for compliance with all applicable Technical Provisions and survey documents. The boundary location and the survey methods remain the responsibility of Developer, and are not part of this review process. TxDOT will have no obligation to accept the Acquisition Survey Document Package as complete until the reviewing RPLS has signed and sealed the compliance certificate (compliance certificate form to be provided by TxDOT).
26. Parcel numbering shall follow the TxDOT ROW Manual. Parcels are to be numbered based upon the parent tract. Developer shall revise parcel numbering due to subsequent transactions as in the following example: From a 50-acre parent tract, with a proposed Facility ROW

acquisition parcel identified as “Parcel 14”, a 5-acre tract is sold which will also require Facility ROW acquisition. The result is, “Parcel 14” is “Not Used”, and the two new Facility ROW acquisition parcels are identified as “Parcel 14A and 14B”. If the property containing “Parcel 14B” sells a portion, then “Parcel 14B” is “Not Used” and the new Facility ROW acquisition parcels are identified as “Parcel 14C and 14D”, etc. Developer shall not use the letter “E” to avoid confusion with easement designations. Parcel numbering shall be sensitive to the appraisal of the required parcels.

27. Complicated portions of a Facility ROW acquisition survey can cause the Facility ROW Map to be very difficult to read. TxDOT’s preferred solution is to create an additional Facility ROW map sheet or sheets for details, curve data, general notes, etc. The primary page would still retain the whole property inset, record ownership data, and most of the usual information. The additional sheet(s) should be clearly referenced and be numbered as the next sequential page(s). Pages numbered with a letter added (for example: 6A, 6B) are for revisions and corrections. Developer shall use the preferred solution unless TxDOT approves an alternate method.
28. An ownership sheet or sheets, containing an index to the information for all the parcels, shall be included and located near the beginning of the Facility ROW map, after the title sheet and control sheet. The ownership sheet index shall include the parcel numbers, the names of the property owners, the vesting deed recording information, the record area of the parent tract, the area of parcel(s) to be acquired, the area of the remainder(s) left and right, the beginning and ending stations of the parcel along the Facility ROW line, and the sheet number in the Facility ROW map where the parcel is located.
29. At property corners where more than one monument is found, a detail shall be provided to show the measured relationship between the monuments found and the monument set or held.
30. Developer shall purchase all materials, supplies and all items necessary for proper survey monumentation. Developer may purchase Type II monuments from TxDOT. TxDOT shall make available for pick-up by Developer Type II monuments within 75 Days after TxDOT receives from Developer a written order, specifying the number of monuments to be purchased. Payment for TxDOT-supplied monuments shall be due within 30 Days after TxDOT delivers to Developer a written invoice. Developer may use these monuments only for this Facility and shall be responsible for proper storage thereof.
31. Developer at the request of the property owner or TxDOT shall re-stake the proposed Facility ROW with ½” iron rod and aluminum cap.

The survey documents produced by the Developer are the property of TxDOT, and release of any document shall be subject to TxDOT’s prior written approval.

Developer shall refer to Section 9 of the Technical Provisions for additional survey requirements.

Developer shall provide sufficiency of design to determine the Ultimate Configuration ROW need and produce ROW maps that delineate the proposed ROW and potential impacts to the remaining ROW. Developer shall deliver to TxDOT a hard copy roll plot of the Ultimate Configuration ROW map and electronic pdf copy. Developer shall provide a design certification of ROW for each parcel which confirms that the proposed ROW acquisition is adequate and necessary to construct and perform operations and maintenance on the Facility and that other ROW acquisition alternatives are not feasible and/or cost prohibitive (sample to be provided by TxDOT).

7.3.2 Additional Reporting Requirements

No additional requirements.

7.3.3 Title Services

No additional requirements.

7.3.4 Introduction to Property Owners

No additional requirements.

7.3.5 Appraisals

No additional requirements.

7.3.5.1 Appraisal Services

No additional requirements.

7.3.5.2 Appraisal Review

No additional requirements.

7.3.6 Facility ROW Acquisition Package Approval

No additional requirements.

7.4 Acquisition Activities

No additional requirements.

7.4.1 ROW Negotiations

Replace subparagraph 4 of Section 7.4.1 of Book 3 with the following:

4. Advise the property owners, lessee, licensees, occupants, and other holders of compensable interests, as applicable, of the administrative settlement process. Confer with and transmit to TxDOT's ROW Administrator any settlement request from property owners, lessees, licensees, occupants, or other holders of any compensable interest, as applicable, including a detailed recommendation from Developer in accordance with standards, manuals and procedures as defined in Section 7.2 of the Technical Provisions. Developer and TxDOT shall jointly determine

whether to accept a settlement request. Delivery of the administrative settlement request and Developer's recommendation to TxDOT must occur within 15 Business Days following Developer's receipt of the administrative settlement request.

Replace subparagraph 10 of Section 7.4.1 of Book 3 with the following:

10. Maintain a complete parcel file for each parcel. Developer shall maintain (housed separately from the relocation files) all original documentation related to the purchase of the real property interests in conformance with TxDOT standards, manuals, and procedures, as defined in Section 7.2 of the Technical Provisions. All original Facility ROW documents must be retained and properly secured in Developer's Facility office or as otherwise approved by TxDOT. Developer shall deliver to TxDOT periodically, or as requested by TxDOT, signed original documents with a transmittal form during the acquisition process; provided, however, that Developer shall deliver to TxDOT all remaining original documents upon completion of the acquisition of Facility ROW for the Facility.

7.4.2 Relocation Assistance

Replace paragraph 2 of Section 7.4.2 of Book 3 with the following:

Developer shall maintain a relocation office (meeting ADA requirements) within reasonable proximity of the Facility area as approved by TxDOT. Developer shall post the relocation office hours. At a minimum, the office hours of the relocation office shall meet the following timetables:

- Monday thru Friday: 8:00 am to 5:00 pm
- Saturday: office may be closed, unless property owner requests an appointment between 9:00 am and 12:00 pm
- Sunday: office may be closed

Replace subparagraph 8 of paragraph 5 of Section 7.4.2 of Book 3 with the following:

8. Request at least two moving estimates from moving companies to effect relocation of personal property or consistent with the Uniform Act.

7.4.3 Closing Services

No additional requirements.

7.4.4 Condemnation Support

Supplement Section 7.4.4 of Book 3 with the following:

Developer shall provide an individual or individuals having sufficient knowledge of the design of the Facility to appear as an expert witness for testimony at the special commissioners hearing or other proceedings. This individual(s) is also responsible for preparing exhibits as requested by TxDOT or the

Office of the Attorney General in support of said testimony.

Replace subparagraph 6 of Section 7.4.4 of Book 3 with the following:

6. Upon completion of TxDOT Form ROW-E-49 – Request for Eminent Domain Proceedings, prepare a condemnation packet containing two copies each of the following documents: the completed TxDOT form, negotiation logs, the updated title report not more than 90 Days old, appraisal receipt acknowledgment, pre-appraisal contact sheet, signed and sealed field notes, parcel sketch, bisection clause and access clause exhibits (if necessary), final offer letter reflecting latest appraisal, complete minute order request form (form to be provided by TxDOT), any correspondence sent by Developer or from the owner of the compensable interest or representatives, one copy of the appraisal report not more than 120 Days old, and proof of good faith negotiations. Submit two complete condemnation packets to TxDOT’s ROW Administrator for review and approval.

7.4.5 Clearance/Demolition of Facility ROW

Replace subparagraph 1 of Section 7.4.5 of Book 3 with the following:

1. Within ten Days from acquisition of the property and improvements, secure and protect the buildings, improvements and fixtures on the Facility ROW until they are disposed of or demolished. Developer shall board-up, mow, and winterize as required by TxDOT or applicable Law.

7.4.6 Property Fence

No additional requirements.

7.4.6.1 Property Fencing for Public Properties

No additional requirements.

7.4.6.2 Property Fencing for Private Properties

No additional requirements.

7.5 Early ROW Acquisition

No additional requirements.

8 GEOTECHNICAL

8.1 General Requirements

No additional requirements.

8.2 Design Requirements

No additional requirements.

8.2.1 Subsurface Geotechnical Investigation by Developer

Supplement Section 8.2.1 of Book 3 with the following:

- *(First bullet)* And, drainage characteristics.
- *(Second bullet)* And, soil compressibility, and short-term and long-term strength tests and properties.
- *(Fourth bullet)* Include the slope stability analysis for embankment and excavation slopes including both short-term (undrained) and long-term (drained) conditions, and discussion of design measures undertaken to ensure stability and safety of all slopes. The design minimum factor of safety required for global facility of a slope will be in accordance with Good Industry Practice. The analysis shall consider the potential for long-term surficial slide failures common to high plasticity clays in Texas, and shall provide specific recommendations to minimize their occurrence. Slightly steeper than 3:1 slopes may be acceptable at certain locations if the stability analysis justifies it and subject to TxDOT's approval.

8.2.2 Pavement Design

Supplement Section 8.2.2 of Book 3 with the following:

Developer may use flexible pavement for the Segment 3A Facility Segment and Segment 3C Facility Segment which are designed based on the current AASHTO or AASHTO (1993) design procedure and the subsurface geotechnical data collected by Developer. With respect to the Initial Mandatory Scope for the Segment 3C Facility Segment, and with respect to mill and/or overlay work on any Facility Segment, where flexible pavement structures are used, the surface mix shall have a minimum thickness of 1.5 inches.

Developer's pavement design report shall also include the following:

- Tabulation of the relevant subgrade design values such as the modulus of sub-grade reaction (k-value), resilient modulus, or other basis for each pavement design section
- Description of Site conditions including any potentially soft compressible zones requiring special design considerations, and the presence and location of expansive soils requiring special design

considerations

- Procedures undertaken to identify soluble sulfates and measures to prevent potentially deleterious reactions
- Description of recommended subgrade stabilization procedures including the type of stabilizing agents, the application rates, compaction criteria, strength requirements, total depth of treatment, and other relevant details

Developer shall coordinate the design and construction of all cross streets with the Governmental Entity having jurisdiction whether a municipality, county, or TxDOT.

9 LAND SURVEYING

9.1 General Requirements

No additional requirements.

9.2 Administrative Requirements

No additional requirements.

9.2.1 Right-of-Entry

No additional requirements.

9.3 Design Requirements

No additional requirements.

9.3.1 Units

Supplement Section 9.3.1 of Book 3 with the following:

Work shall conform to state plane coordinates.

The surface adjustment factor for the Facility shall be:

Surface Adjustment Factors:

- Tarrant County: 1.00012
- Denton County: 1.000150630

9.3.2 Survey Control Requirements

Supplement Section 9.3.2 of Book 3 with the following:

If Developer chooses to use GPS methods, it shall utilize the primary survey control provided by TxDOT.

Developer shall establish and maintain a permanent survey control network. The control network should consist of, at a minimum, monuments set in intervisible pairs at spacing of no greater than three miles. Monuments shall be TxDOT bronze survey markers installed in concrete and marked as directed by the most current edition of the *TxDOT Survey Manual*. Developer shall replace all existing survey monuments and control points disturbed or destroyed. Developer shall make all survey computations and observations necessary to establish the exact position of all other control points based on the primary control provided.

Developer shall deliver to TxDOT, a listing of all primary and secondary control coordinate values, original computations, survey notes and other records including GPS observations and analysis made by Developer as the data are available.

9.3.3 Conventional Method (Horizontal & Vertical)

No additional requirements.

9.3.3.1 Horizontal Accuracy Requirements for Conventional Surveys

No additional requirements.

9.3.3.2 Vertical Accuracy Requirements for Conventional Surveys

No additional requirements.

9.3.4 Right of Way Surveys

No additional requirements.

9.3.4.1 Accuracy Standard

No additional requirements.

9.3.5 Survey Records and Reports

No additional requirements.

9.4 Construction Requirements

9.4.1 Units

Replace Section 9.4.1 of Book 3 with the following:

Comply with Section 9.3.1 of the Technical Provisions.

9.4.2 Construction Surveys

Replace Section 9.4.2 of Book 3 with the following:

Comply with Section 9.3.2 of the Technical Provisions.

9.5 Deliverables

No additional requirements.

9.5.1 ROW Surveying and Mapping

Supplement Section 9.5.1 of Book 3 with the following:

Developer shall provide to TxDOT all topographic mapping created by Developer, which shall be in digital terrain model format using the software and version thereof being used by TxDOT at the time the mapping is developed. Developer shall provide to TxDOT digital files of all aerial photography that Developer produces or obtains in the course of construction, within seven days after any such aerial photography is done. Prior to Final Acceptance of each of the Segment 3A Facility Segment and the Segment 3C Facility Segment, Developer shall perform final project aerial photography and deliver to TxDOT digital files of the final project aerial photography

along with as-built digital terrain model in respect of such Facility Segment.

9.5.2 ROW Monuments

No additional requirements.

10 GRADING

10.1 General Requirements

Supplement Section 10.1 of Book 3 with the following:

Any features that are abandoned in place shall be removed to at least two feet below the final finished grade or one foot below the pavement subbase, whichever is lower.

Developer shall not utilize Ultimate Configuration cut sections, beyond the limits required for Mandatory Scope construction, as an embankment borrow source.

10.2 Preparation within Facility Limits

No additional requirements.

10.3 Design Requirements

Revise the heading of Section 10.3 of Book 3 to the heading “Design Requirements”.

Delete the second sentence in Section 10.3 of Book 3.

10.4 Construction Requirements

Revise the heading of Section 10.4 of Book 3 to the heading “Construction Requirements”.

Supplement Section 10.4 of Book 3 with the following:

Developer shall perform finished grading and place topsoil in all areas suitable for vegetative slope stabilization (and areas outside the limits of grading that are disturbed in the course of the Work) that are not paved.

10.5 Deliverables

No additional requirements.

10.5.1 Released for Construction Documents

No additional requirements.

11 ROADWAYS

11.1 General Requirements

Supplement Section 11.1 of Book 3 with the following:

Where changes to the roadway geometrics result in revisions to the Facility ROW, Developer is responsible for the initiation and progression of all environmental and public involvement processes in coordination with TxDOT. Developer shall perform all ROW services that are necessitated by proposed changes, in accordance with the FA Documents.

11.2 Design Requirements

Replace Section 11.2 of Book with the following:

Developer shall coordinate its roadway design with the design of all other components of the Facility, including aesthetics. Developer shall design the Facility roadways to integrate with streets and roadways that are adjacent or connecting to the Facility. All design transitions to existing facilities shall be in accordance with the *TxDOT Roadway Design Manual*.

Developer shall design all Elements in accordance with the applicable design criteria and Good Industry Practice.

11.2.1 Control of Access

Replace Section 11.2.1 of Book 3 with the following:

Developer shall use best efforts to maintain all existing property accesses, including those not shown on the NEPA Schematics, the Initial Mandatory Scope Schematic, Mandatory Scope Schematic or the TxDOT Works Design, or provide alternative accesses following the current *TxDOT Access Management Manual* in order to minimize impacts to affected properties. Developer shall not revise control of access without TxDOT review and approval.

11.2.2 Roadway Design Requirements

The Work includes the design and construction of the Initial Mandatory Scope and Mandatory Scope configuration presented in the Initial Mandatory Scope Schematic and Mandatory Scope Schematic.

Developer shall design the Elements of the Facility to meet or exceed the geometric design criteria noted in Tables 11-1 and 11-2 along with approved design deviations included in Attachment 11-1 of the Technical Provisions and approved design exceptions included in Attachment 11-2 of the Technical Provisions.

Developer shall coordinate the design and construction of improvements on crossing streets in accordance with the Governmental Entity having jurisdiction of said roadway. The Final Design of crossing streets

shall incorporate the design criteria noted in Table 11-1 and the cross section elements noted in Table 11-3a, 11-3b and 11-3c for the applicable scope of the Initial Mandatory Scope and Mandatory Scope. For avoidance of doubt, cross streets must be designed horizontally and vertically in accordance with Table 11-1.

For the Mandatory Scope, the outside lane of all newly constructed Frontage Roads in new locations, existing Frontage Roads being reconstructed in the same location, or existing Frontage Roads to remain in place shall accommodate a future shared use lane. A minimum 6' sidewalk shall be constructed along the outside of the curb of all newly constructed Frontage Roads in new locations or existing Frontage Roads being reconstructed in the same location. Existing Frontage Roads to remain in place shall have a newly constructed 6' sidewalk outside of the existing curb and gutter of the shared-use lane if a 6' sidewalk doesn't already exist. In those cases where the shared use lane will be an existing shoulder, the edge condition shall be modified to accommodate curb and gutter and a 6' sidewalk.

11.2.2.1 Miscellaneous Roadway Design Requirements

All roadside safety devices used on the Facility shall meet current crash test and other safety requirements in accordance with TxDOT standards.

Driveways shall be designed in accordance with the guidelines, which will be considered requirements, specified in TxDOT's *Roadway Design Manual - Appendix C*, "Driveway Design Guidelines" to be functionally adequate for land use of adjoining property. It is understood that the Developer must obtain a temporary construction easement to construct driveways beyond TxDOT ROW limits. Driveways shall be constructed with correct throat widths and full 90-degree radius sweeps.

The border width, measured from back of curb to the ROW line, along Frontage Roads and crossing streets shall be 15 feet minimum unless specified otherwise.

Linear super elevation transitions are permitted on bridges only.

Provided that TxDOT shall ensure each such new access complies with all necessary requirements including but not limited to the relevant standards, local statutes, and Environmental Approvals, Developer shall design and construct three driveways at the approximate locations and of the dimensions shown in Attachment 11-3 of the Technical Provisions, Segment 3A Driveways.

Table 11-1: Geometric Design Criteria for North Tarrant Express - Segments 3A, 3B & 3C Facility Segment

	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS ¹	Collector- Distributor	IH 35W NB to Spur 280
GENERAL						
Roadway classification	Urban freeway or tollway	Low speed urban street	Urban freeway or tollway	Low speed urban street	Urban collector	Low speed urban street
Design Speed	Seg 3A & 3C: 70 mph Seg 3A (STA 901+00 to southernmost construction limit): 55mph Seg 3A (SH121): 55mph Seg 3B: 70 mph	40 mph	Seg 3A & 3C: 50 mph See note 25, Seg 3B: 50mph See note 18	Seg 3A & 3C: 35mph Seg 3B: 35mph	40mph	25mph
Stopping sight distance See note 2	Seg 3A & 3C: 730’ See note 11 Seg 3A (STA 901+00 to southernmost construction limit): 495’ Seg 3A (SH121): 495’ Seg 3B: 730’	305’	Seg 3A & 3C: 425’ See notes 7,9,12,13 Seg 3B: 425’	Seg 3A & 3C: 250’ Seg 3B: 250’	305’	155’
HORIZONTAL ALIGNMENT						
Maximum Superelevation rate	6%	N/A	6%	N/A	6%	6%

	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS ¹	Collector- Distributor	IH 35W NB to Spur 280
HORIZONTAL ALIGNMENT						
Minimum radius of curvature	Seg 3A & 3C: 2050' Seg 3A (STA 932+00 to southernmost construction limit): 1065' Seg 3A (SH121): 1065' Seg 3B: 2050'	675' 3b=490'	Seg 3A & 3C: 835' Seg 3B: 835'	Seg 3A & 3C: 465' Seg 3B: 465'	510'	180'
VERTICAL ALIGNMENT						
Minimum grade	0.35% 3b=.5%	0.35%	0.35% 3b=.5%	0.35%	0.35%	0.35%
Maximum grade	Seg 3A & 3C: 3.0% Seg 3A (STA 901+00 and 913+55 ML to southernmost construction limit): 4% Seg 3A (SH121): 4% Seg 3B: 3%	7.0% 3b=9%	4.0 % See note 3 See note 21 See note ,25	7.0%	5.0%	7.0%
Minimum K-value for crest vertical curve	Seg 3A & 3C: 247 Seg 3A (STA 901+00 to southernmost construction limit): 114 Seg 3A (SH121): 114 Seg 3B: 247	44	Seg 3A & 3C: 84 Seg 3B: 84 See note 25	Seg 3A & 3C: 29 Seg 3B: 29	44	12

	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS ¹	Collector- Distributor	IH 35W NB to Spur 280
VERTICAL ALIGNMENT						
Minimum K-value for sag vertical curve	Seg 3A& 3C: 181 Seg 3A (STA 901+00 and 913+55 ML to southernmost construction limit): 115 Seg 3A (SH121): 115 Seg 3B: 181	64	Seg 3A & 3C: 96 Seg 3B: 96 See note 25	Seg 3A & 3C: 49 Seg 3B: 49	64	26
CROSS SECTION						
Lane width	12'	12' inside lanes 3A and 3B: 14' outside lane (includes 2' shared use lane) 3C: 12' outside lanes 24' (for u-turns)	14' (single lane) 12' per lane (multi-lane)	12' 3C: 14' outside lane, 11' other lanes	12'	14'
Shoulder width (min.)						
Inside shoulder	4' (2 or less lanes) 10' (3 or more lanes) See note 20,	NA (curbed)	4' See note 2	NA (curbed)	4' (2 or less lanes) 10' (3 or more lanes) See note 2	4'
Outside shoulder	10' See note 20,	NA (curbed)	8' See note 2	NA (curbed)	8'/10' See notes 2 and 14	8'
Curb offset	N/A	2' Outside 1' Inside	N/A	1'	2'	N/A

	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS ¹	Collector- Distributor	IH 35W NB to Spur 280
CROSS SECTION						
Cross-slope (typical) Lanes	2.5 %	2.0 %	2.0 %	2.0 %	2.0 %	2.0 %
Shoulders	2.5 %	2.0 %	2.0 %	2.0 %	2.0 %	2.0 %
CLEAR ZONE						
Distance from edge of travel lane unless noted otherwise	30'	3' (measured from face of curb) See note 1	16'	3' (measured from face of curb) See note 1	16'	16'
Side slopes: within clear zone	6:1 max	6:1 max	6:1 max	6:1 max	6:1 max	6:1 max
outside clear zone (steeper slopes may be acceptable if stability analysis justify their use and barrier protected)	3:1 max	3:1 max	3:1 max	3:1 max	3:1 max	3:1 max
VERTICAL CLEARANCE (Minimum) for New Bridges						
Over roadway	16'-6"	16'-6"	16'-6"	16'-6"	16'-6"	16'-6"
Over streets	16'-6"	16'-6"	16'-6"	16'-6"	16'-6"	16'-6"
Over railroad	23'-0"	23'-0"	23'-0"	23'-0"	23'-0"	23'-0"
Over electrified light rail	26'-6"	26'-6"	26'-6"	26'-6"	26'-6"	26'-6"
Overhead signs	21' 0"	21'-0"	21'-0"	21'-0"	21'-0"	21'-0"
Pedestrian crossings	17'-6"	17'-6"				
OTHER						
Design vehicles	WB-50	WB-50	WB-50	WB-50	WB-50	WB-50

	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS ¹	Collector- Distributor	IH 35W NB to Spur 280
OTHER						
Driveway radius	N/A	30' min commercial, 15' min. residential	N/A	30' min commercial, 15' min. residential	N/A	N/A

Notes:

1. The face of new bridge columns shall be located 6 feet or more from the face of curb. This requirement is not applicable to medians on cross streets. A 1.5' minimum offset is permitted for medians on cross streets.
2. To mitigate restrictions on the design imposed by sight distance, it is acceptable to position the 8-foot shoulder on the inside of the curve and the 4-foot shoulder on the outside of the curve.
3. Ramps and direct connectors shall have a maximum grade of 4% with the exception of the following listed ramps and direct connectors in Segment 3A Facility Segment which shall have a maximum grade of 5%. However, Developer shall prepare the design using Good Industry Practice using flatter grades where possible:
 - a. Ramp connecting IH 35W SB to IH 30 at south end of project to tie to existing
 - b. Ramp connecting IH 35W SB to Northside Dr. from station 8+78.00 to 28+50.00
 - c. Ramp connecting IH 35W SB to Northside Dr. from station 28+50.00 to 36+50.00
 - d. Ramp connecting Weatherford to IH 35W SB from station 16+68.00 to 23+90.00
 - e. Ramp connecting SH 121 SB to Belknap from station 32+45.00 to 46+85.00
 - f. Ramp connecting SH 183 to IH 35W SB from station 18+25.00 to 22+00.00
 - g. Ramp connecting Weatherford to SH 121 NB from station 23+06.66 to 35+28.67
 - h. Ramp connecting IH 30 EB to IH 35W NB at south end of project
 - i. DC connecting IH 35W SB to SH 121 NB
 - j. Ramp connecting IH 35W Managed Lane SB to SPUR 280 SB
 - k. Ramp connecting IH 35W Managed Lane NB to IH 35W General Purpose Lane NB in Segment 3A Facility Segment
 - l. Ramp connecting IH 35W General Purpose Lane SB to IH 35W Managed Lane SB in Segment 3A Facility Segment
 - m. Ramp connecting SPUR 280 NB to IH 35W Managed Lane NB in Segment 3A Facility Segment

Segment 3A Facility Segment:

4. STEADMAN from station 10+00.00 to 19+30.00 shall be considered a Frontage Road and classified as a low speed urban street as shown on the Approved NEPA Schematics (South Segment).
5. WEA-BEL from station 10+00.00 to 31+24.17 shall be considered a Frontage Road and classified as a low speed urban street as shown on the Approved NEPA Schematics (South Segment).
6. SH 121 SB from station 52+77.00 to 115+85.36 shall be considered a direct connector and classified as an urban freeway as shown on the Approved NEPA Schematics (South Segment).
7. Direct connector SH 121 SB from station 52+77.00 to 115+85.36 shall have a minimum stopping sight distance (SSD) for 45 mph design speed.
8. SH 121 NB from station 52+77.00 to 101+01.93 shall be considered a direct connector and classified as an urban freeway as shown on the Approved NEPA Schematics (South Segment).
9. Direct connector SH 121 NB from station 52+77.00 to 101+01.93 shall have a minimum SSD for 45 mph design speed.
10. IH 35W Managed Lane from station 883+62.35 to 908+25.36 shall be considered a direct connector and classified as an urban freeway as shown on the Approved NEPA Schematics (South Segment).
11. IH 35W Managed Lane from station 727+66.92 to 743+00.25 shall have a minimum SSD for 60 mph design speed.
12. Direct connector IH 35W SB-121 NB from station 44+59.80 to 59+88.47 shall have a minimum SSD

- for 40 mph design speed.
13. Direct connector Spur 280 – SH 121 NB from station 62+93.47 to 72+70.88 shall have a minimum SSD for 30 mph design speed.
 14. The following roadways shall be classified as collector-distributor. The outside shoulder width shall be as listed below:
 - a. Roadway connecting Spur 280 to IH 35W SB - 8 ft outside shoulder width
 - b. Roadway connecting Spur 280 to SH 121 NB - outside shoulder width varies (8 ft min. to 10 ft max.)
 - c. Roadway connecting SH 121 SB to Spur 280 - 10 ft outside shoulder width
 - d. Roadway connecting SH 121 SB to IH 35W NB - 10 ft outside shoulder width
 15. Direct connector SH 121 SB to Spur 280 SB shall have a minimum SSD for 35mph design speed as shown on the Approved NEPA Schematics (South Segment).
 16. Spur 280 is classified as an urban arterial with a minimum design speed of 35 mph as shown on the Approved NEPA Schematic (South Segment).
 17. Direct connector ramp from Spur 280 EB to IH 35W NB may be designed using a 380ft radius and 35mph minimum design speed.
 18. Northbound frontage road 35FRN4I south of East 4th Street shall meet a design speed of 30 mph to avoid impacts to the existing Ham Branch levee clear zone and the Central City Project's valley storage and aquatic mitigation area.

Segment 3B Facility Segment:

19. Ramp IH 35W SB to US 287 WB shall have a design speed = 40 mph.

Segment 3C Facility Segment:

20. Managed Lanes and General Purpose Lanes shoulder width design exception in order to be able to preserve the existing bridges SH 170 over IH35W:
 - a. Initial Mandatory Configuration: GPL shoulder widths will be 8' for exterior shoulders and for ML shoulder widths will be 2' for interior shoulders under SH-170 and shoulders will be transition at 50:1 taper before and after this crossing.
21. Ramps and Direct Connectors shall have a maximum grade of 4% with the exception of the following, which shall have a maximum grade of 5%. However, Developer shall prepare the design using Good Industry Practice using flatter grades where possible:
 - a. A 5% maximum grade will be used for access ramps to Frontage Road from Manage Lane NB maximum (RML-WP-B) necessary to adequately connect with the Frontage Road and provide as much as distance as possible between the merge point from ML NB to the FR and cross street (Westport Pkwy) instead of 4%.
 - b. A 5% maximum grade will be used for access ramps to Managed Lanes from Frontage Road near Westport Parkway SB maximum (RWP-ML-B) necessary to adequately connect with the Frontage Road and provide as much as distance as possible between diverge point from FR SB in the FR and cross street (Westport Parkway) instead of 4%.
22. The weaving length between access ramps (R35S-170-W) from General Purpose Lanes to Frontage Road Southbound and the next access exit from Frontage Road to General Purpose Lanes Northbound (RWP-35S-B) is a maximum 730'.

23. Desirable Spacing between the exit ramp from Managed Lanes Northbound to Frontage Road and cross street (Westport Parkway) and existing driveways placed on the Frontage Road Northbound will be as maximum 600'.
24. Desirable spacing between cross street (Westport Parkway) and existing driveway and the exit ramp from Frontage Road SB to Manage Lane Southbound will be as maximum 125' instead desirable of 300' variable distance to gore.
25. Ramps and Direct Connectors will have a design speed 50 MPH with the exception of the following, which shall have a design speed of 45 MPH or 40 MPH:

The following shall have a design speed of 45 MPH:

- a. Ramp R35S-170-W, from GPL SB to FR SB between 1144+00 and 1155+00 (SAG K Value = 79 CREST K Value = 61 and Max. Long. Grade = 4%), which is necessary to provide minimum vertical clearance below the Ramp from FR SB to ML SB.
- b. Ramp RWP-35S-B from FR SB to GPL SB between 1166+00 and 1177+00 (SAG K Value = 79 CREST K Value = 61 and Max. Long. Grade = 4%)

Table 11-2: Geometric Design Criteria for the North Tarrant Express IH 35W/IH 820 Interchange

	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS ¹
GENERAL				
Roadway classification	Urban freeway or tollway	Low speed urban street	Urban freeway or tollway	Low speed urban street
Design Speed	60 mph	40 mph	50 mph See note 6 and 7, 8, 9 and 11	30-40 mph
Stopping sight distance	570'	305'	425' See note 4 and 11.	200' (30 mph) 305' (40 mph)
HORIZONTAL ALIGNMENT				
Maximum superelevation rate	6%	N/A	6%	N/A
Minimum radius of curvature	1340'	675'	835' See note 8 and 9	675' (40 mph) 300' (30 mph)
VERTICAL ALIGNMENT				

Minimum grade	0.35%	0.35%	0.35%	0.35%
Maximum grade	3.0%	7.0%	4.0% See note 5	7.0% (40 mph) 9.0% (30 mph)
Minimum K-value for crest vertical curve	151	44	84 See note 6 and 7	44 (40 mph) 19 (30 mph)
	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS¹
VERTICAL ALIGNMENT				
Minimum K-value for sag vertical curve	136	64	96 See note 6 and 7	64 (40 mph) 37 (30 mph)
CROSS SECTION				

Lane width	12'	12' inside lanes 14' outside lane (includes 2' shared use lane) 24' (for u-turns)	14'(single lane) 12' per lane (multi-lane)	12'
Shoulder width (min.)				
Inside shoulder	4' (2 or less lanes) 10' (3 or more lanes) See note 10.10'	NA (curbed)	4' See note 3, note 10	NA (curbed)
Outside shoulder		NA (curbed)	8' See note 3	NA (curbed)
Curb offset	N/A	2'	N/A	refer to Table 11-3
Cross-slope (typical)				
Lanes	2.5%	2.0%	2.0%	2.0%
Shoulders	2.5%	2.0%	2.0%	2.0%
	MAINLANES (GP & ML)	FRONTAGE ROADS	RAMPS/DIRECT CONNECTORS	CROSSING STREETS¹
CLEAR ZONE				

Distance from edge of travel lane unless noted otherwise	30'	3' (measured from face of curb)	16'	See notes 1 and 2
Side slopes: within clear zone	6:1	6:1	6:1	6:1
outside clear zone	3:1 max	3:1 max	3:1 max	3:1 max
VERTICAL CLEARANCE (Minimum)				
Over roadway	16'-6"	16'-6"	16'-6"	16'-6"
Over streets	16'-6"	16'-6"	16'-6"	16'-6"
Over railroad	23'-0"	23'-0"	23'-0"	23'-0"
Over electrified light rail	26'-6"	26'-6"	26'-6"	26'-6"
Overhead signs	21' 0"	21'-0"	21'-0"	21'-0"
Pedestrian crossings	17'-6"	17'-6"		
Design vehicles	WB-50	WB-50 WB-67 (for u-turns)	WB-50	As noted in Table 11-3
Driveway radius	N/A	30' min commercial 15' min. residential	N/A	30' min commercial 15' min. residential

Notes:

1. See Table 11-3 for crossing street functional classification
2. The face of new bridge columns shall be located 6 feet or more from the face of curb. This requirement is not applicable to medians on cross streets. A 1.5' minimum offset from face of curb is permitted for medians on cross streets.
3. To mitigate restrictions on the design imposed by sight distance, it is acceptable to position the 8-foot shoulder on the inside of the curve and the 4-foot shoulder on the outside of the curve.
4. Ramps and direct connectors shall have a minimum stopping sight distance (SSD) of 425' with the exception of the following listed ramps and direct connectors, for which the minimum SSD is as noted.
 - a. Direct connector ramp connecting IH 35W to IH 820 WB shall have a minimum SSD of 305'.
 - b. Direct connector ramp connecting IH 35W NB to IH 820 EB shall have a minimum SSD of 305'.
 - c. Direct connector ramp connecting IH 35W SB to IH 820 WB shall have a minimum SSD of 360'.
 - d. Direct connector ramp connecting IH 35W SB to IH 820 EB shall have a minimum SSD of 360'.
 - e. Direct connector ramp connecting IH 820 WB to IH 35W NB shall have a minimum SSD of 360'.
 - f. Direct connector ramp connecting IH 820 WB to IH 35W SB shall have a minimum SSD of 305'.
 - g. Direct connector ramp connecting IH 820 EB to IH 35W NB shall have a minimum SSD of 305'.
 - h. Direct connector ramp connecting IH 820 EB to IH 35W SB shall have a minimum SSD of 305'.
 - i. Managed Lane direct connector ramp connecting IH 35W NB to IH 820 EB shall have a minimum SSD of 360'.
 - j. Managed Lane direct connector ramp connecting IH 35W SB to IH 820 EB shall have a minimum SSD of 305'.
 - k. Managed Lane direct connector ramp connecting IH 820 WB to IH 35W NB shall have a minimum SSD of 305'.
 - l. Managed Lane direct connector ramp connecting IH 820 WB to IH 35W SB shall have a minimum SSD of 360'.
 - m. Direct connector ramp identified on the schematic as WR8248 shall have a minimum SSD of 360'.
 - n. Direct connector ramp identified on the schematic as WR248 shall have a minimum SSD of 305'.
5. Ramps and direct connectors shall have a maximum grade of 4% with the exception of the following listed ramps and direct connectors which shall have a maximum grade of 5%. Developer shall prepare the design using Good Industry Practice using flatter slopes where possible.
 - Managed Lane direct connector ramp connecting IH 35W NB to IH 35W EB (Approved NEPA Schematics (Segment 1) station 20+50 to station 30+25)
6. The vertical design speed for the IH-820 EB to IH-35W NB ML is for 40 MPH. The design will have K values of 44 for crest curves and 64 for sag curves, which are for a design speed of 40 MPH, instead of 50 MPH.
7. The vertical design speed for the IH-35W SB ML to IH-820 WB is 45 MPH. The design will have K values of 61 for crest curves and 79 for sag curves, which are for a design speed of 45 MPH, instead 50 MPH.
8. The new Direct Connector from IH-820 EB to IH-35W NB ML will be designed with a radius of 689', which corresponds to design speed of 45 MPH, instead of 50 MPH
9. The new Direct Connector from IH-35W SB ML to IH-820 WB will be designed with a radius

of 725', which corresponds to design speed of 45 MPH, instead of 50 MPH.

10. If the existing 820 WB bridge over Mark IV is not reconstructed under a Change Order and therefore all improvements related to the Mark IV area are not implemented, the Direct Connector from IH-35W SB ML to IH-820 WB may be designed with 6' interior shoulder width between Station 39+00 and the end auxiliary lane taper merging to the IH 820 WB following AASTHO recommendations for auxiliary lanes
11. Ramps and Direct Connectors shall have a minimum stopping sight distance (SSD) of 425' with the exception of the following, for which the minimum SSD is as noted:
 1. The Direct Connector ramp connecting IH-820 EB to IH-35W NB ML shall have a minimum SSD of 305', which correspond to 40 MPH over R=689'
 2. The Direct Connector ramp connecting IH-35W SB ML to IH-820 WB shall have a minimum SSD of 305' which correspond to 40 MPH over R=725'.

For the Direct Connectors at IH-820 Interchange, the following will apply. See [Table 11-2](#) for details:

Acceleration lanes length will be designed using parameters defined in figure 3.36 TxDOT (RDM) instead of 1,050' total length for acceleration lanes:

For the IH-35W SB ML to IH_820 WB: Acceleration lane length will be designed for 50 MPH (R=2000' entrance curve design speed) to 60 MPH.

For the IH-820 EB to IH-35W NB ML: Acceleration lane length will be designed for 50 MPH to 50 MPH.

Table 11-3a: Crossing Street Functional Classifications

Segment 3A - CROSS SECTION ELEMENTS FOR ROADWAYS CROSSING IH 35W																	
Intersecting Street	Jurisdiction	Functional Classification	Design Speed (MPH)	Configuration (Over/Under)	Design Vehicle	CONFIGURATION											
						WESTBOUND							EASTBOUND				
						U-Turn	Sidewalk Minimum Width	Curb	Curb Offset	Through Lanes	Turn Lanes	Through Lanes	Curb Offset	Curb	Sidewalk/Minimum Width	U-Turn	Pedestrian Rail Above Bridge Barrier
NE 28 th St/ SH 183	Fort Worth	Major Arterial Urban	35	Over	WB-50	Y-24'	N See note 2	Y	2' outside 1' inside	3(12')	2(12') with 4' curbed median	3(12')	2' outside 1' inside	Y	Y-10'	N	N
NorthsideDr/ Yucca Ave.	Fort Worth	Major Arterial Urban	35	Under	WB-50	Y-24'	N See note 2	Y	2' outside 1' inside	2(12')	3(12') with 4' curbed median	3(12')	2' outside 1' inside	Y	N See note 2	Y-24'	N
Pharr St	Fort Worth	Collector Urban	35	Under	WB-50	N	N See note 2	Y	2'				2'	Y	N See note 2	N	N
Luella St	Fort Worth	Collector Urban	35	Over	WB-50	N	Y-6'	Y	2' outside	1(12')	2(12') with no curbed median	1(12')	2' outside	Y	Y-6'	N	N
Sylvania Ave	Fort Worth	Minor Arterial Urban	40	Over	WB-50	N	Y-6'	Y	2'	2(12')	2(12') with 4' curbed median	2(12')	2'	Y	Y-6'	N	N

Notes:

1. The face of new bridge columns shall be located 6 feet or more from the face of curb. This requirement is not applicable to medians on cross streets. A 1.5' minimum offset from face of curb is permitted for medians on cross streets.
2. Cross streets without sidewalks shall not be configured (including structural elements) to preclude sidewalk construction in the future. Sidewalk areas behind the curb shall not exceed 2% cross slope and shall be 6 feet minimum width. Raised medians in between U-turns and through lanes can be used as sidewalks provided they are 10 feet wide or greater and provided the clearance to any obstruction, excluding existing columns on bridge overpasses to remain in place for the Initial Mandatory Scope, is 10 feet wide or greater.

Table 11-3b: Crossing Street Functional Classifications

Segment 3B – CROSS SECTION ELEMENTS FOR ROADWAYS CROSSING IH 35W																	
Intersecting Street	Jurisdiction	Functional Classification	Design Speed (MPH)	Configuration (Over/Under)	Design Vehicle	CONFIGURATION											
						WESTBOUND						EASTBOUND					
						U-Turn	Sidewalk Minimum Width	Curb	Curb Offset	Through Lanes	Turn Lanes	Through Lanes	Curb Offset	Curb	Sidewalk/Minimum Width	U-Turn	Pedestrian Rail Above Bridge Barrier
Basswood Blvd	Fort Worth	Local Street Urban	40	Over	WB-67	Y-24'	N	Y	2'	2(12')	2(12') with 5' median	2(12')	2'	Y	N	Y-24'	N
N Tarrant Pkwy	As existing	As existing	As existing	As existing	As existing	Y-24'	As existing	As existing	As existing	As existing	As existing	As existing	As existing	As existing	As existing	Y-24'	As existing

Notes:

1. The face of new bridge columns shall be located 6 feet or more from the face of curb. This requirement is not applicable to medians on cross streets. A 1.5' minimum offset from face of curb is permitted for medians on cross streets.
2. Cross streets without sidewalks shall not be configured (including structural elements) to preclude sidewalk construction in the future. Sidewalk areas behind the curb shall not exceed 2% cross slope and shall be 6 feet minimum width. Raised medians in between U-turns and through lanes can be used as sidewalks provided they are 10 feet wide or greater and provided the clearance to any obstruction, excluding existing columns on bridge overpasses to remain in place for the Initial Mandatory Scope, is 10 feet wide or greater.
3. Scope at N Tarrant Pkwy includes addition of U-turns as part of 3B Ultimate Capacity Improvement.

Table 11-3c: Crossing Street Functional Classifications

CROSS SECTION ELEMENTS FOR ROADWAYS CROSSING IH 820																			
Intersecting Street	Jurisdiction	Functional Classification	Design Speed (MPH)	Configuration (over / under)	Design Vehicle	CONFIGURATION													
		Roadway Classification				SOUTHBOUND						NORTHBOUND							
		Terrain				U-Turn	Sidewalk Minimum Width	Curb	Curb Offset	Through lanes	Turn Lanes	Through lanes	Curb Offset	Curb	Sidewalk Minimum Width	U-turn	Clear Zone for Cross Street Thru Lanes (Based on ADT)	Bike/Ped Accommodation	Pedestrian Rail above bridge Barrier
Mark IV Parkway	Fort Worth	Collector Street Urban	40	Under	WB-67	Y-24'	N	Y	2'	2(12')	2(12') with 18' median	2(12')	2'	Y	N	Y-24'	3'	Y	N
		Urban																	

Notes:

1. The face of new bridge columns shall be located 6 feet or more from the face of curb. This requirement is not applicable to medians on cross streets. A 1.5' minimum offset from face of curb is permitted for medians on cross streets.
2. Cross streets without sidewalks shall not be configured (including structural elements) to preclude sidewalk construction in the future.

Table 11-3d: Crossing Street Functional Classifications in Segment 3C Facility Segment:

Segment 3C – CROSS SECTION ELEMENTS FOR ROADWAYS CROSSING IH 35W																	
Intersecting Street	Jurisdiction	Functional Classification	Design Speed (MPH)	Configuration (Over/Under)	Design Vehicle	CONFIGURATION											
						WESTBOUND					Turn Lanes	EASTBOUND					Pedestrian Rail Above Bridge Barrier
U-Turn	Sidewalk Minimum Width	Curb	Curb Offset	Through Lanes	Through Lanes	Curb Offset	Curb	Sidewalk/Minimum Width	U-Turn								
Alliance Blvd (east side)	Fort Worth	Local Street Urban	35	Over	WB-50	Y-24'	N	Y	2'	3(14'+11'+11')	2(12')	3(14'+11'+11')	2'	Y	N	Y-24'	N
Westport Pkwy	Fort Worth	Major Arterial	35	Under	WB-50	Y-24'	N See note 2	Y	2'	2(14'+11')	2(11') with 5' curbed median	2(14'+11')	2'	Y	N See note 2	Y-24'	N
SH 170 Alliance Gateway Fwy Westbound	Fort Worth	Low speed urban street	35	Over	WB-50	Y-24'	N See note 2	Y	2'	4(14'+12'+11'+11')	N	-	-	-	-	-	-
SH 170 Alliance Gateway Fwy Eastbound	Fort Worth	Low speed urban street	35	Over	WB-50	-	-	-	-	-	N	3(14'+11'+11')	2'	Y	N See note 2	Y-24'	N
Keller Hicks Rd	Fort Worth	Major Arterial	35	Under	WB-50	Y-24'	N See note 2	Y	2'	2(14'+11')	2(11') with 5' curbed median	2(14'+11')	2'	Y	N See note 2	Y-24'	N
Golden Triangle Blvd	Fort Worth	Major Arterial	35	Under	WB-50	Y-24'	N See note 2	Y	2'	2(14'+11')	2(11') with 5' curbed median	2(14'+11')	2'	Y	N See note 2	Y-24'	N
Heritage Trace Pkwy	Fort Worth	Principal Arterial	35	Over	WB-50	Y-24'	N See	Y	2'	3(14'+11'+11')	2(12') with	3(14'+11'+11')	2'	Y	N See	Y-24'	N

							note 2				5' curbed median				note 2		
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Notes:

1. The face of new bridge columns shall be located 6 feet or more from the face of curb. This requirement is not applicable to medians on cross streets. A 1.5' minimum offset from face of curb is permitted for medians on cross streets.
2. Cross streets without sidewalks shall not be configured (including structural elements) to preclude sidewalk construction in the future. Sidewalk areas behind the curb shall not exceed 2% cross slope and shall be 6 feet minimum width. Raised medians in between U-turns and through lanes can be used as sidewalks provided they are 10 feet wide or greater and provided the clearance to any obstruction, excluding existing columns on bridge overpasses to remain in place for the Initial Mandatory Scope, is 10 feet wide or greater.

12 DRAINAGE

12.1 General Requirements

Supplement Section 12.1 of Book 3 with the following:

Developer shall deliver to TxDOT complete drainage reports jointly with detailed design. As part of the Initial Mandatory Scope, Developer shall design and construct the drainage facilities to meet the requirements of the Mandatory Scope or the Ultimate Configuration, whichever is more stringent, with the exception of the Segment 3A Facility Segment south of station 862+20 which shall be designed for the Initial Mandatory Scope. For the Segment 3C Facility Segment, Developer will be allowed to preserve and supplement the existing culverts that are proven to comply with the Drainage requirements of Table 12-1 and with Attachment 19-1 of the Technical Provisions, Performance and Measurement Table Baseline at the Initial Mandatory Scope. The physical location of inlet structures affected by the Work shall accommodate the Ultimate Configuration. Developer shall construct culverts to the length required to accommodate the Initial Mandatory Scope. However, Developer shall size these culverts to satisfy Ultimate Configuration requirements.

In areas outside the Facility ROW or areas within the Facility ROW but not affected by the Work, Developer is not responsible for upgrading the existing drainage system whether or not it is determined to meet the criteria in the current TxDOT *Hydraulic Manual* in the existing condition. However, the Work shall not cause any existing drainage system condition to become substandard nor shall it make worse any drainage condition.

Design shall incorporate latest land-use plans and/or reasonable potential land uses from Tarrant County and other applicable Governmental Entities within the Facility limit, including expected changes to the existing watercourses and drainage systems.

12.2 Administrative Requirements

No additional requirements.

12.2.1 Data Collection

No additional requirements.

12.2.2 Coordination with Other Agencies

No additional requirements.

12.3 Design Requirements

Supplement Section 12.3 of Book 3 with the following:

Analysis of the combined drainage system shall ensure there are no adverse impacts on the constructed drainage system.

12.3.1 Surface Hydrology

No additional requirements.

12.3.1.1 Design Frequencies

Replace Section 12.3.1.1 of Book 3 with the following:

Developer shall use the design frequencies listed in Table 12-1.

Table 12-1: Drainage Design Frequencies

Functional Classification and Structure Type	Design Frequency (years)					Check Flood
	2	5	10	25	50	100
Interstate, controlled access hwy, & managed toll lanes (mainlines):						
◆ culverts					X	X
◆ bridges					X	X
Principal arterials:						
◆ culverts					X	X
◆ small bridges (See note 1)					X	X
◆ major river crossings					X	X
Minor arterials and collectors (including Frontage Roads):						
◆ culverts				X		X
◆ small bridges (See note 1)				X		X
◆ major river crossings					X	X
Local roads and streets (off-system projects):						
◆ culverts	X					X
◆ small bridges	X					X
Storm drain systems on Interstate and controlled access						

	Design Frequency (years)					Check Flood
	2	5	10	25	50	
Highways and managed toll lanes (mainlines):						
Functional Classification and Structure Type	2	5	10	25	50	100
◆ inlets and drain pipe			X			X
◆ inlets for depressed roadways (see note 2)					X	X
Storm drain systems on other Highways and Frontage Roads:						
◆ inlets and drain pipe			X			X
◆ inlets and drain pipe for depressed roadways (see note 2)					X	X
Notes:						
<p>1. Small bridges are considered less than 50’ in length. Frontage Road bridges over Little Fossil Creek shall be designed to accommodate a 25-year design frequency.</p> <p>2. The definition of a depressed roadway is a roadway that provides nowhere for water to drain even when the curb height is exceeded. Curb height is defined as 5” (five inches).</p>						

12.3.1.2 Hydrologic Analysis

Supplement Section 12.3.1.2 of Book 3 with the following:

Developer shall perform hydraulic and hydrologic analysis for the design of drainage features to ensure accommodation of both the ultimate development of the drainage areas and interim drainage during construction of the Ultimate Configuration.

Developer shall design for the future changes in land use that may affect the magnitude of runoff and therefore the design capacity of drainage structures. Developer shall incorporate anticipated changes in the basin land use, characteristics, or water operations into the hydrologic parameters. Land use shall be estimated based on potential uses as of the latest long-range planning horizon.

12.3.2 Storm Sewer Systems

Supplement Section 12.3.2 of Book 3 with the following:

The hydraulic grade line for design storm shall be 1 foot below the lip of gutter, 1 foot below the top of grate inlet, and 1 foot below the top of a manhole cover.

Developer shall not use for permanent barriers slotted barriers that allow storm water runoff to flow under them and into adjacent travel lanes. Slotted barriers may be used only for temporary conditions during construction.

12.3.2.1 Pipes

Supplement Section 12.3.2.1 of Book 3 with the following:

All pipes shall be reinforced concrete.

The minimum pipe size inside diameter shall be 18” for laterals, 24” for laterals placed under pavement, and 24” for trunk lines. The minimum box culvert height, inside dimension, shall be 2 feet.

The maximum spacing for clean-out points (inlets and manholes) shall be 300 feet for 24”, 375 feet for 36”, 450 feet for 42” to 54”, and 900 feet for 60” or greater.

12.3.2.2 Ponding

Supplement Section 12.3.2.2 of Book 3 with the following:

Table 12-2: Allowable Ponding Widths by Roadway Classification

Roadway Classification	Design Storm Allowable Ponding Width	Check Storm Allowable Ponding Width
Interstate, controlled access Highways	Low shoulder plus one-half the width of the outer lane.	One lane free of encroachment
Barrier separated Managed Lanes 1) Single lane 2) Multiple lanes	1) Low shoulder plus two ft. 2) Low shoulder plus one lane	Safe passage** of one lane of traffic in each direction
Principal arterials/Highways*	Low shoulder plus one lane	Safe passage** of one lane of traffic in each direction
Ramps, direct connectors	Low shoulder plus two ft.	Safe passage** of one lane of traffic
Frontage Roads	Low shoulder plus one lane	Safe passage** of one lane of traffic in each direction
Minor cross streets	Width and depth to allow safe passage** of one lane of traffic in each direction.	No adverse impact to adjacent property

* Highways with two or more lanes in each direction

** Safe passage shall mean the width of one traffic lane being clear of ponding.

12.3.3 Stormwater Storage Facilities

No additional requirements.

12.3.4 Hydraulic Structures

Supplement Section 12.3.4 of Book 3 with the following:

Bridge class culverts shall have a minimum rise of four ft. (inside dimension).

Replace the third paragraph of Section 12.3.4 of Book 3 with the following:

For all culverts, the maximum allowable headwater elevation for the design frequency shall not exceed one foot below the subgrade elevation of the applicable roadway.

12.3.4.1.1 Method Used to Estimate Flows

No additional requirements.

12.3.4.1.2 Design Frequency

Replace the third paragraph of Section 12.3.4.1.2 of Book 3 with the following:

For interstate Highways, the minimum design flood to be used in the detailed design shall be the 50-year frequency. The design flood shall provide a minimum of 2 feet of freeboard, except on Segment 3C Facility Segment where existing bridges over Henrietta creek that will remain in Initial Mandatory Scope, such as SB FR, SB GPL, NB ML and NB FR. These bridges will keep the existing current freeboard. For the new bridges over Henrietta Creek in Initial Mandatory Scope, such as the SB ML and NB GPL, a widening of the existing bridges will be allowed, and a 1.5' freeboard will be allowed. For the new ramp bridge NB GPL to FR, a 1.5' freeboard will be allowed. For the Ultimate Configuration 1.5' freeboard will be allowed for the new and existing bridges.

12.3.4.1.3 Hydraulic Analysis

No additional requirements.

12.3.4.1.4 Bridge/Culvert Waterway Design

No additional requirements.

12.3.4.1.5 Bridge Deck Drainage

No additional requirements.

12.3.4.1.6 Drainage Report for Major Stream Crossings

Supplement Section 12.3.4.1.6 of Book 3 with the following:

Major stream crossings are waterways either listed in the FEMA Flood Insurance Studies or requiring a bridge or bridge class culvert structure. Otherwise, the waterway is defined to be a minor stream crossing.

12.4 Construction Requirements

No additional requirements.

12.5 Deliverables

No additional requirements.

13 STRUCTURES

13.1 General Requirements

Supplement Section 13.1 of Book 3 with the following:

Developer shall prepare a detailed plan for each Element constructed on the Facility detailing the design, construction and maintenance activities to achieve a service life that meets the Residual Life Handback Requirements as defined in Section 19 of the Technical Provisions.

Developer shall design and construct bridge structures required for the Initial Mandatory Scope to the total length and span arrangement required for the Ultimate Configuration, except the General Purpose Lane structures south of Station 862+20, including spanning future lanes that will be constructed below the structure as a part of the Ultimate Configuration. Developer shall design and construct bridge structures to the width required to satisfy the requirements of the Initial Mandatory Scope. Developer shall ensure that bridges constructed for the Initial Mandatory Scope can be widened to the Ultimate Configuration width at a later date with limited impact to aesthetics and traffic. In locations where the Initial Mandatory Scope does not call for the construction of the direct connector structures or full-width construction of the direct connector structures, Developer shall make provisions to accommodate the future construction or widening.

Developer shall build the other structural components of the Initial Mandatory Scope to accommodate the Mandatory Scope. Developer shall evaluate the feasibility of future construction of the Ultimate Configuration and, where this is compromised, construct those portions of the Ultimate Configuration (e.g., footings, ducts, bents, etc.). At bridges with wrap-around MSE wall abutments, the MSE wall shall be designed and constructed to the length required to satisfy the Initial Mandatory Scope or Ultimate Configuration to minimize tear-down. Developer shall design and construct abutments behind MSE walls to the Ultimate Configuration width, or provide specific accommodation for future widening. All retaining walls within the limits of Initial Mandatory Scope construction shall accommodate the Ultimate Configuration, except south of station 862+20.

For the Segment 3C Facility Segment Developer may widen the existing NB and SB GPL bridge over Henrietta Creek.

For the Segment 3C Facility Segment the following structures will not be reconstructed as part of the Initial Mandatory Scope:

SH170 EB over IH35W

SH170 WB over IH35W

Alliance Parkway over IH35W

Heritage Parkway over IH35W

North Tarrant Parkway over IH35W
IH35W NB FR over Henrietta Creek
IH35W SB FR over Henrietta Creek
IH35W NB Manage Lane over Henrietta Creek
IH35W SB General Purpose Lanes over Henrietta Creek.

For the Segment 3C Facility Segment the following structures will not be required to be compatible with the Ultimate Configuration:

SH170 EB over IH35W
SH170 WB over IH35W
East part of Alliance Parkway over IH35W
Heritage Parkway
IH35W NB FR over Henrietta Creek
IH35W SB FR over Henrietta Creek

13.2 Design Requirements

No additional requirements.

13.2.1 Design Parameters

Supplement Section 13.2.1 of Book 3 with the following:

Developer shall submit to TxDOT for comment a corridor structure type study report for bridges, retaining walls, noise walls, sign structures, and other structure components. The corridor structure type study report shall describe the structural system to be used on the Facility, design parameters for the system, materials, performance history of the chosen system and ability to meet the Residual Life requirements at Handback, impacts to the public during construction, and other information to describe the chosen system.

Unless otherwise noted, design for all roadway and pedestrian structural elements shall be based on the Load and Resistance Factor Design (LRFD) methodology included in TxDOT's *LRFD Bridge Design Manual* and as presented in the most recent *AASHTO LRFD Bridge Design Specifications*, including all interim revisions. Sidewalks shall be provided on bridge structures in accordance with Table 11-3.

The Segment 3A Facility Segment Initial Mandatory Scope General Purpose Lanes on IH-35W shall maintain the existing vertical alignment between station 870+00 and station 898+56 on the northbound General Purpose Lanes and between station 891+50 and station 908+02 on the southbound General Purpose Lanes. Developer must demolish the Segment 3A Facility Segment General Purpose Lanes south of station 862+20, including structures that tie in to existing ramps, in order to build the Ultimate

Configuration General Purpose Lanes in accordance with the Basic Configuration, the Environmental Approval permitting process and Approved NEPA Schematics.

Developer shall not be responsible to upgrade existing improvements south of Spur 280 during the DB Phase for the Initial Mandatory Scope where such existing improvements are not negatively impacted.

Replace the fourth paragraph of Section 13.2.1 of Book 3 with the following:

Direct connectors shall be designed to accommodate the Ultimate Configuration. In locations where the Mandatory Scope does not call for the construction of Direct Connectors, Developer shall evaluate the preliminary bent locations in order to consider the feasibility of the future construction. In locations where the Initial Mandatory Scope or Mandatory Scope calls for construction of direct connectors with a lesser amount of lanes than the Ultimate Configuration, Developer may only build the structural components to accommodate the width required for the Initial Mandatory Scope or Mandatory Scope as applicable in each case.

13.2.2 Bridge Design Loads and Load Ratings

Supplement Section 13.2.2 of Book 3 with the following:

Bridges shall be designed to bear future utilities load of 125 pounds per linear foot per 12-foot lane, except for direct connection structures which shall be 125 pounds per linear foot per structure.

Developer shall provide to TxDOT both an inventory and an operating load rating of the constructed structures. Load ratings shall be in accordance with the *AASHTO's Manual for Condition Evaluation of Bridges* and applicable Laws.

Vehicular Collision Force – The vehicular collision loads described in Chapter 2, Section 2 of the *TxDOT Bridge Design Manual* (Revised October 2015) shall apply to the design of bridges in the Segment 3C Facility Segment.

13.2.3 Bridge Decks and Superstructures

Supplement Section 13.2.3 of Book 3 with the following:

Developer shall not use fracture critical members for bridges without written authorization from TxDOT, and if allowed by TxDOT fracture critical members shall be designed to allow full access for inspection.

Joints for all grade separation structures shall be sealed.

Steel and concrete box girders and caps (substructure) shall be accessible without impacting traffic below. Developer shall make steel and concrete box girders and caps (substructure) with a minimum inside depth of six feet to facilitate interior inspection. Developer shall include a minimum access opening of 3'-0" diameter into all cells, and between cells, of the girders to allow free flow of air during inspections. The outside access opening cover shall hinge to the inside of the box girder and caps (substructure).

Developer shall incorporate an electrical system (110V and 220V) inside the box girder and caps (substructure) with lighting and power outlets. Developer shall install air-tight sealed and locked entryways on all hatches and points of access.

Geometric Constraints for Pretensioned Concrete I Girders – For bridges in the Segment 3C Facility Segment, Developer shall include a minimum of four I-girders in any span where the vertical clearance over a roadway is less than 20 feet. Otherwise, a minimum of three I-girders per span may be used.

13.2.4 Bridge Foundations

Supplement Section 13.2.4 of Book 3 with the following, after the first paragraph:

Developer shall take span arrangement and foundation locations into account to accommodate the Ultimate Configuration of the Facility.

Developer shall secure a Section 408 Permit from USACE, as required, before starting construction on bridges and approaches.

13.2.4.1 Trinity River Crossing

For the Trinity River crossing, Developer shall submit to the Tarrant Regional Water District (TRWD) and the United States Army Corps of Engineers (USACE) for review and approval all documents such agencies may require prior to the start of construction of the Trinity River bridges and approaches. These may include, but are not limited to, detailed bridge plans for the Initial Mandatory Scope and preliminary Ultimate Configuration design and a seepage analysis and geotechnical report of the crossing and surrounding areas. At a minimum, the detailed plans shall show bent locations, bent sizes, bent depths and how erosion along the crossing and surrounding areas will be addressed. Developer is given notice that the review and approval process is anticipated to take approximately 18 months.

The bottom elevation of bridge beams or low chord shall be no lower than the standard project flood elevation as determined by the USACE plus 3 feet (SPF+3) or the top of the existing levee, whichever elevation is higher. For the avoidance of doubt, the existing IH-35W embankments are not considered to be part of the existing levee.

The existing bridge drilled shafts in the floodway shall be removed to 2' below grade. The existing bridge drilled shafts in the channel shall be removed to the design grade elevation or the current grade elevation of the channel, whichever is lower.

Bents will be allowed within the existing standard project floodplain of the Trinity River excluding the original river channel and shall be located so as to minimize disruption to the current hydraulic conditions of the river.

13.2.4.1.1 Bent Locations

13.2.4.1.1.1 Base Case Bent Locations

New bridge spans shall be equal to or greater than existing bridge spans. Developer shall be allowed to locate bridge bents in the overbuilt levee as shown in Attachment 13-1 of the Technical Provisions, Trinity River Crossing Bent Locations Base Case.

13.2.4.1.1.2 Alternative 1 Bent Locations

If Developer is unable to obtain an agreement from the USACE which allows bents to be located such that the requirements in Section 13.2.4.1.1.1 above can be met, then Developer shall be allowed to locate bents in the overbuilt levee such that the maximum span is 180' and compensation shall be as set forth in Section 13.2.6.10 of the FA.

13.2.4.1.1.3 Alternative 2 Bent Locations

If Developer is unable to obtain an agreement from the USACE which allows bents to be located such that the requirements in Section 13.2.4.1.1.1 and Section 13.2.4.1.1.2 above can be met, then Developer shall locate the bents to meet the requirements and conditions set forth in the agreement with the USACE and compensation shall be as set forth in Section 13.2.6.11 of the FA.

13.2.4.1.2 Secant Wall

13.2.4.1.2.1 Base Case Secant Wall

A secant or other type of retaining wall will not be required to support or protect the levee.

13.2.4.1.2.2 Alternative 1 Secant Wall

If a secant or other type of retaining wall is required to support and protect the levee, then Developer shall design and construct a secant or other type of retaining wall to support and protect the levee in accordance with USACE as required by the Section 408 Permit requirements and compensation shall be as set forth in Section 13.2.6.12 of the FA.

13.2.5 Bridge Railing and Barriers

Supplement Section 13.2.5 of Book 3 with the following:

Table 13-1 lists approved TxDOT bridge railing standards.

Table 13-1: TxDOT Standard Bridge Railing

TRAFFIC RAILS		
Rev Date (see note 1)	Std Name	Description
04-09	T101	Steel Post with W-Beam (27" tall)
04-09	T223	ConcBm& Post w/6' Openings (32" tall)
04-09	T221	Concrete Parapet (32" tall)
04-09	T401	Concrete Parapet w/Stl Post and Rail (33" tall)
04-09	T402	Concrete Parapet w/Stl Post and Rail (42" tall)
04-09	T411	Concrete Traffic Rail w/windows(TX Classic)(32" tall)
04-09	T551	Concrete Safety F-Shape (32" tall)
04-09	T552	T501 w/Multiple Drain Slots (32" tall)
04-09	T77	Steel Post w/Two Elliptical Pipes (33" tall)
04-09	T80HT	Conc and Steel Heavy Truck Traffic Rail (50" tall)
04-09	SSTR	Single Slope Traffic Rail (36" tall)
COMBINATION RAILS		
Rev Date	Std Name	Description
04-09	C223	T223 w/Steel Pipe Rail (42" tall)
04-09	C221	T221 w/Steel Pipe Rail (42" tall)
04-09	C402	T402 w/Steel Pipe Rail (42" tall)
04-09	C411	Comb Rail w/windows (TX Classic) (42" tall)
MISCELLANEOUS RAILS		
Rev Date	Std Name	Description
04-09	T101RC	Retrofit Guide for T101 on Curbs
04-09	T1-101R	Retrofit (Convert T1 to T101)
04-09	T2/T201TR	Guide for T2/T201(Retrofit Thrie-Beam Transition)
04-09	T202TR	Guide for T202 (Retrofit Thrie-Beam Transition)
04-09	TRF	Traffic Rail Foundation
04-09	PR1	Pedestrian Rail, (42" tall)
04-09	PR2	Pedestrian Rail, (42" tall)
04-09	PR3	Pedestrian Rail, (43.75" tall)

Note 1: Revision date at Amendment Effective Date.

13.2.6 Retaining Walls

Supplement Section 13.2.6 of Book 3 with the following:

Modular walls employing interlocking blocks shall not be used where surcharge loads from vehicular traffic can be present.

MSE walls shall not be used to structurally support abutment foundations on the Facility.

13.2.7 Noise/Sound Walls

No additional requirements.

13.2.8 Drainage Structures

No additional requirements.

13.2.9 Sign, Illumination, and Traffic Signal Supports

No additional requirements.

13.2.10 Widening

Developer shall complete a load rating and condition survey of existing bridges to be widened. Ratings shall be based on current TxDOT procedures.

13.2.11 Corrosion Protection Measures

Epoxy-coated reinforcing steel shall be used a) in cast-in-place concrete portions of all bridge deck slabs, and b) in concrete bridge railings and barriers when required by applicable standards listed in Table 13-1. No additional corrosion protection measures are required for any structures.

13.3 Construction Requirements

No additional requirements.

13.3.1 Concrete Finishes

Replace Section 13.3.1 of Book 3 with the following:

Concrete finishes shall comply with the performance requirements as stated in Section 15 of the Technical Provisions.

13.3.2 Structure Metals

No additional requirements.

13.4 Deliverables

Replace Section 13.4 of Book 3 with the following:

Developer shall submit with the Record Drawings the following to TxDOT:

- An inventory and operating ratings of constructed structures.
- Corridor structure type study report.
- Design notebooks.
- Structure load ratings.
- Documentation in the Record Drawings of all steel casings, whether temporary or permanent, left in place on new drilled shafts.

14 RAIL

14.1 General Requirements

Replace Section 14.1 of Book 3 with the following:

This Section 14 consists of the requirements to coordinate, design and construct all railroad/transit elements of the Facility. Developer is responsible to identify each railroad and transit owner/operator in the Facility corridor.

14.2 Design Standards

Revise the heading of Section 14.2 of Book 3 to the heading “Design Requirements”.

Replace Section 14.2 of Book 3 with the following:

The design for all railroad elements of the Facility, unless specified otherwise, shall be based on the most recent American Railway Engineering and Maintenance of Way Association (AREMA) requirements, the requirements of the operating railroad, and the practices, guidelines, procedures and methods contained in the TxDOT *Traffic Operations Manual, Railroad Operations Volume* as amended per Attachment 14-1 of the Technical Provisions, Amendments for the TxDOT’s Traffic Operations Manual, Railroad Operations Volume, February 2000. The most restrictive criteria shall be utilized.

14.2.1 Hodge Yard Crossing

At the IH-35W crossings over the railroad tracks, approximately between station 724+00 and station 727+00, also known as the Hodge Yard Crossing, Developer shall be allowed to locate bents within the Operating Railroad ROW as shown in Attachment 14-2 of the Technical Provisions, Hodge Yard Crossing Base Case Scenario.

14.2.1.1 Scenario 1

If Developer is unable to obtain an agreement from the Operating Railroad which allows bents to be located such that the requirements in Section 14.2.1 above can be met, then Developer shall be allowed to locate bents within the Operating Railroad ROW as shown in Attachment 14-3 of the Technical Provisions, Hodge Yard Crossing Scenario 1 and compensation shall be as set forth in Section 13.2.6.7 of the FA.

14.2.1.2 Scenario 2

If Developer is unable to obtain an agreement from the Operating Railroad which allows bents to be located such that the requirements in Section 14.2.1 and Section 14.2.1.1 above can be met, then Developer shall locate the bents to meet the requirements and conditions set forth in the agreement with the Operating Railroad and compensation shall be as set forth in Section 13.2.6.8 of the FA.

14.2.2 Dooling Street Crossing

At the IH-35W crossings over the railroad tracks, approximately between station 740+00 and station 750+00, also known as the Dooling Street Crossing, Developer shall be allowed to locate bents within the Operating Railroad ROW as shown in Attachment 14-4 of the Technical Provisions, Dooling Street Crossing Base Case Scenario.

14.2.2.1 Scenario 1

If Developer is unable to obtain an agreement from the Operating Railroad which allows bents to be located such that the requirements in Section 14.2.2 above can be met, then Developer shall locate the bents to meet the requirements and conditions set forth in the agreement with the Operating Railroad and compensation shall be as set forth in Section 13.2.6.9 of the FA.

14.2.3 Other Design Requirements

Developer's design shall minimize service interruptions to existing rail lines.

At Highway-rail grade crossings, the roadway and drainage design parameters shall be maintained at the crossing with exception to the cross slope of the pavement which may be transitioned to match the grade across the rail line. The structural design of any Utilities, including drainage structures, installed by Developer and crossing a rail line, shall be in accordance with the operating railroad's design criteria.

Developer shall coordinate, design and construct the construction staging, including any shooflies, with the Operating Railroad.

14.3 Work Affecting Railroad Operations

No additional requirements.

14.3.1 Railroad Agreement

No additional requirements.

14.3.2 Agreement for Construction, Maintenance and Use of Right of Way

No additional requirements.

14.3.3 Operation Safety

No additional requirements.

14.3.4 Railroad Right of Entry Agreement

No additional requirements.

14.3.5 Developer Right of Entry Agreement

No additional requirements.

14.3.6 Insurance Requirements

No additional requirements.

14.4 Construction Requirements

No additional requirements.

15 AESTHETICS AND LANDSCAPING

15.1 General Requirements

Supplement Section 15.1 of Book 3 with the following:

The intent of this Section 15 is to provide an enhancement value to both the users and the onlookers of the corridor and to provide a roadway corridor with continuity to the NTE Segments 1 and 2W Project and attractiveness through the use of comprehensive aesthetic treatments.

Where the Initial Mandatory Scope facility is coincident with the Ultimate Configuration, landscaping shall be designed and constructed such that apparent construction requirements for the Ultimate Configuration are not hindered. In locations where the Initial Mandatory Scope does not coincide with the Ultimate Configuration, Developer shall provide landscaping to achieve the desired aesthetic affect.

15.2 Administrative Requirements

Supplement the list of bullets in Section 15.2 of Book 3 with the following:

- Material finish and color of light poles and mast arms, ambient lighting colors, and general layout conditions.

15.2.1 Aesthetics Concepts

Replace Section 15.2.1 of Book 3 with the following:

The aesthetic Elements shall be designed as corridor wide enhancements. To the extent practicable, the aesthetic Elements shall remain consistent in form, materials, and design throughout the length of the Facility and with the approved aesthetics enhancements of the NTE Segments 1 and 2W Project.

15.2.2 Aesthetics and Landscaping Plan

Supplement Section 15.2.2 of Book 3 with the following:

TxDOT approval of the Aesthetics and Landscaping Plan is required prior to construction of any Elements affected by the Plan.

The Aesthetics and Landscaping Plan shall address all the aesthetic Elements of the Facility with the production of the following plans:

A. Aesthetics Plans

- A master plan that will convey the layout of the various roadway conditions, e.g. where the depressed sections, elevated sections, and at-grade roadways are located, where there are bridges, cantilevered structural sections, etc.;

- Drawings showing where site specific elements are located, e.g. fences, signage, potential locations of community improvement opportunity areas, gate way markers, control buildings, bridge enhancements, landscaping, etc.; and
- Color schemes and their locations.

B. Landscaping Plans

- A plan that indicates plant palettes, locations of plants, plant types, and planting dates;
- A maintenance program; and
- Composite drawings of all Utilities and easements that would interfere with landscaping, markers, or any other identified enhancements.

The Aesthetics and Landscaping Plan shall include all plans, elevations, perspectives, isometrics, etc., as needed to fully convey the aesthetic treatment.

Upon completion of the Aesthetics and Landscaping Plan, Developer shall consolidate the information, which establishes the requirements for engineering of the Highway corridor aesthetics. The guidelines shall serve as the primary standard guidance necessary to produce the intended aesthetic form, function and appearance for the Facility.

15.2.3 Personnel

No additional requirements.

15.3 Design Requirements

No additional requirements.

15.3.1 Aesthetics Principles and Strategies

Supplement the list of bullets in Section 15.3.1 of Book 3 with the following:

- Aesthetics shall not interfere with safety, constructability, and maintenance requirements.

15.3.2 Walls

Supplement Section 15.3.2 of Book 3 with the following:

Noise walls shall comply with all Environmental Commitments.

The Developer is not required to incorporate aesthetic enhancements in noise/sound walls where such aesthetic enhancements alone would require the reconstruction of such noise/sound walls. Aesthetic enhancements shall only be used on noise/sound walls where they can be implemented through the use of attachments or color.

With respect to the Segment 3C Facility Segment, retaining walls shall have ashlar finishes.

15.3.3 Bridges and Other Structures

Supplement Section 15.3.3 of Book 3 with the following:

All bridge substructure columns shall be consistent in form, texture, and paint application with similar shapes and details used for bridges in the Segment 3A Facility Segment.

Developer shall ensure that all beam spans shall be of constant depth throughout each structure. If steel spans are used, depth of steel spans may differ from the depth of concrete spans.

For all U-turn bridges over IH-35W in the Segment 3C Facility Segment, the cross street name shall be included on the new U-turn bridges to match the street name on existing bridges in the same style with an appropriate color.

15.3.4 Trees, Shrubs, and Other Plant Materials

Supplement Section 15.3.4 of Book 3 with the following:

Vegetation provided as a part of the Developer's Aesthetics and Landscaping Plan, other than grassing and erosion control measures, shall be incorporated in accordance with the following guidelines:

- Developer shall place one ornamental, evergreen, or flowering tree per 750 square feet of plantable Facility ROW. Trees shall be placed in accordance with TxDOT's minimum clearance zones. Tree quantity calculations shall be determined by plantable Facility ROW outside of the minimum clearance zones. Trees shall be placed in the Facility ROW between mainlines and Frontage Roads. Trees shall be a minimum of six feet high.
- Developer shall place one deciduous tree per 1,000 square feet of plantable Facility ROW. Trees shall be placed in accordance with TxDOT's minimum clearance zones. Tree quantity calculations shall be determined by plantable Facility ROW outside of the minimum clearance zones. Trees shall be placed in the Facility ROW between mainlines and Frontage Roads. Trees shall have a three-inch caliper minimum.
- The mature canopy shall not overhang the travel lane or shoulder of any roadway.

15.3.5 Lighting

Developer shall design aesthetic enhancement lighting in accordance with the following aesthetic criteria:

- One pole type for the entire corridor during the DB Phase and, to the extent practicable, the Operating Period matching the approved lighting for the NTE Segments 1 and 2W Project. Developer shall provide, as part of the Aesthetics and Landscaping Plan, a lighting layout plan that addresses each light fixture (i.e. roadside lighting, high mast lighting, under bridge fixture, etc.) and type of light

fixture (i.e. LED lighting, point source lighting, HID, etc.).

15.3.6 Control Buildings

Developer shall provide a minimum of three design concepts for control buildings, if any, for review by TxDOT as part of the Aesthetics and Landscaping Plan. The control facilities, vent stacks, power centers, or any other structure that requires the seal of a registered architect, shall require the production of aesthetic concepts as part of the Aesthetics and Landscaping Plan.

15.3.7 Riprap

Concrete paving shall be used in mowing areas which are difficult to maintain or under structures (such as, but not limited to areas near, next to, or between guard fence posts, sign posts, bent columns, next to retaining walls, freeway ramp gores, paved ditches, flumes, ditch inlets, etc.) to improve roadway appearance.

15.3.8 Intersection Hardscape

At a minimum, Developer shall use colored textured concrete in all raised medians at intersections. Monolithic concrete medians may not be used. Concrete pavers may be used only where Governmental Entities agree to maintain them.

15.3.9 Storm Water Quality Facilities

Developer may use water treatment facilities, detention ponds or any other water detention areas as a location for trees, shrubs, and other plant materials.

15.4 Construction Requirements

Replace the first sentence of the first paragraph of Section 15.4 of Book 3 with the following:

Developer shall provide TxDOT sample panels a minimum of 60 Days in advance of starting construction of textured concrete surfaces.

15.5 Deliverables

Replace Section 15.5 of Book 3 with the following.

For the Segment 3A Facility Segment, Developer shall submit the Aesthetics and Landscaping Plan to TxDOT for review and approval no later than 120 Days prior to issuance of NTP2. TxDOT's approval of the Aesthetics and Landscaping Plan shall be a condition to issuance of NTP2. The Aesthetics and Landscaping Plan shall be updated to take into account the Segment 3C Facility Segment, consistent with the plan elements for the Segment 3A Facility Segment.

16 SIGNING, DELINEATION, PAVEMENT MARKING, SIGNALIZATION, AND LIGHTING

16.1 General Requirements

Supplement Section 16.1 of Book 3 with:

No new illumination shall be required on Segment 3A Facility Segment on IH-35W south of the SH 121 interchange (approximate IH35W centerline station 895+00) provided the existing illumination meets the requirements set forth in these Technical Provisions.

Unless otherwise approved by TxDOT, sign structures for the Initial Mandatory Scope shall be located to accommodate the Mandatory Scope and the Ultimate Configuration except where not possible south of station 862+20.

Lighting for the Initial Mandatory Scope shall be designed and constructed to accommodate the Ultimate Configuration or Mandatory Scope, whichever governs to minimize construction of the Ultimate Configuration. The location of high-mast lighting within the Initial Mandatory Scope construction limits shall satisfy the Ultimate Configuration.

For avoidance of doubt, “accommodate” under this Section 16.1 means that the Mandatory Scope and Ultimate Configuration can be built without need to dismantle, remove or relocate sign structures or lighting structures where possible. Developer shall bear all costs and loss of Toll Revenues associated with dismantling, removing or relocating sign structures or lighting structures.

16.2 Administrative Requirements

16.2.1 Meetings

No additional requirements.

16.3 Design Requirements

Supplement Section 16.3 of Book 3 with:

The Developer shall design all signing, delineation, pavement marking, signalization, and lighting in accordance with the current version of the *Texas Manual on Uniform Traffic Control Devices* (TMUTCD).

16.3.1 Final Design

Replace the first sentence of Section 16.3.1 of Book 3 with the following:

Developer shall advance the Final Design of the signing, delineation, pavement marking, signalization, and lighting based on the preliminary operational signing schematic as shown in the Initial Mandatory

Scope Schematic, Mandatory Scope Schematic, TxDOT Works Design, and the Approved NEPA Schematics.

16.3.2 Permanent Signing and Delineation

Supplement Section 16.3.2 of Book 3 with the following:

Signs shall meet the requirements of TxDOT's *Standard Highway Sign Design for Texas*.

16.3.3 Signs – Outside the Facility ROW

No additional requirements.

16.3.4 Advance Toll Information Signs

Supplement Section 16.3.4 of Book 3 with the following:

See Section 21.4 of the Technical Provisions.

16.3.5 Third-Party Signs

No additional requirements.

16.3.6 Sign Support Structures

No additional requirements.

16.3.7 Permanent Pavement Marking

Supplement Section 16.3.7 of Book 3 with the following:

Developer shall provide shoulder texturing which may include raised rumble strips in accordance with appropriate standards. Shoulder texturing shall not be used on direct connectors, on bridges or on ramp pavement.

16.3.8 Permanent Signalization

No additional requirements.

16.3.8.1 Traffic Signal Requirements

Supplement Section 16.3.8.1 of Book 3 with the following:

New or modified traffic signal equipment shall conform to the regional Intelligent Transportation Systems (ITS) architecture and existing interconnected traffic signal systems.

Developer shall design and implement modifications to existing traffic signals within the limits of the Segment 3A Facility Segment and the Segment 3C Facility Segment as a result of the Final Design. Developer shall coordinate with TxDOT and all Governmental Entities to define appropriate traffic signal design requirements, local agency oversight of Developer's work, final acceptance and synchronization of traffic signals.

The traffic signal designs and modifications shall be completed in accordance with the current TxDOT standards and specifications, the TMUTCD and the requirements of the applicable Governmental Entity. The traffic signal designs shall provide for interconnection controllers compatible with the intersection controller hardware, central intersection management software, and wireline or wireless interconnect communications of the entity responsible for operations and maintenance, or as specified by the Governmental Entity responsible for maintenance. Developer shall coordinate the review, approval, inspection, and acceptance of the traffic signals with the Governmental Entity responsible for maintenance.

Developer is responsible for preparing traffic signal agreements (or supplements thereto) for execution by TxDOT and the Governmental Entity having operation and/or maintenance responsibilities. Except for traffic signal systems excluded by agreement, Developer will be responsible for the operations and maintenance of all traffic signal systems within TxDOT ROW for each Facility Segment for the Term of the FA.

16.3.8.2 Traffic Signal Timing Plans

No additional requirements.

16.3.8.3 Traffic Signal Warrants

Replace the second sentence of paragraph three of Section 16.3.8.3 of Book 3 with the following:

If actual traffic volumes are not available, but opening year traffic is available, Developer shall use the procedure in Section 3.5 of the TxDOT *Traffic Signals Manual* to determine the volumes to be analyzed.

16.3.8.4 Traffic Signal Support Structures

No additional requirements.

16.3.9 Permanent Lighting

Supplement Section 16.3.9 of Book 3 with the following:

Developer shall provide continuous lighting along Frontage Roads in locations where the lighting systems are currently provided along the Frontage Roads. Developer shall be responsible for all costs of designing, installing, operating and maintaining the lighting systems. Developer may request reimbursement for the operations and maintenance of such lighting systems from the Governmental Entity to the extent an existing agreement between TxDOT and the Governmental Entity allows such request...

As necessary, Developer shall comply with all Federal Aviation Administration (FAA) requirements, submit appropriate FAA paperwork, make necessary changes to such paperwork when applicable and keep TxDOT informed of FAA involvement.

Developer shall provide continuous lighting and safety lighting systems in accordance with Chapters 5, 6, 7, and 9 of the TxDOT *Highway Illumination Manual*. The lighting design for cross streets and Frontage Roads are to be in accordance with the requirements of the local Governmental Entities or third party agreements.

TxDOT does not require continuous lighting along Frontage Roads not currently illuminated. However, third party requests for lighting within the Facility that Developer intends to implement shall be subject to prior TxDOT approval. For the purpose of this Facility, lighting along the Frontage Roads for a distance of 600' from the nose of the ramps will be considered safety lighting and is the responsibility of the Developer.

Developer shall provide an average to minimum uniformity ratio of 3:1, with a minimum lux of 1.85 and an average lux of 6.5 to 8.6 on all traveled roadways to be illuminated. Traveled roadways include: tolled lanes, General Purpose Lanes, Managed Lanes, auxiliary lanes, ramps, Frontage Roads, and ramp terminal intersections with cross streets.

Additional guidance for illumination is provided in the RID.

16.3.10 Visual Quality

Supplement Section 16.3.10 of Book 3 with the following:

Developer shall not use timber poles for permanent installation.

The Developer shall re-sod or re-seed areas of construction disturbed by the installation of signs, traffic signal systems, or lighting systems after final installation.

16.4 Construction Requirements

No additional requirements.

16.4.1 Permanent Signing and Delineation

Supplement Section 16.4.1 of Book 3 with the following:

Guidance for signing retroreflectivity is provided in the RID.

16.4.2 Permanent Pavement Marking

Supplement Section 16.4.2 of Book 3 with the following:

Guidance for pavement marking retroreflectivity is provided in the RID.

16.4.3 Permanent Signalization

Replace the first sentence of Section 16.4.3 of Book 3 with the following:

Developer shall coordinate with the Utility Owner(s) and shall ensure necessary power service is initiated

and maintained for permanent signal systems.

Supplement Section 16.4.3 of Book 3 with the following:

Developer shall connect and make functional traffic signal controllers for completed intersections operated and maintained by a Governmental Entity to the communications media provided by that Governmental Entity, at or near the completed intersection, for traffic signal monitoring and control. Connection of the completed intersection to the Governmental Entity's communications network shall be coordinated with the Governmental Entity.

16.4.4 Permanent Lighting

Supplement Section 16.4.4 of Book 3 with the following:

Developer shall remove all old illumination-related cable that does not have existing pavement or riprap above it; any existing illumination-related cable that is under the existing pavement or riprap may be abandoned.

16.5 Deliverables

No additional requirements.

16.5.1 Permanent Signing and Delineation

No additional requirements.

16.5.2 Permanent Pavement Marking

No additional requirements.

16.5.3 Permanent Signalization

Supplement Section 16.5.3 of Book 3 with the following:

Developer shall, after implementing approved timing plans, provide TxDOT and Governmental Entities responsible for operation and maintenance of the traffic signal system legible written documentation of all intersection characteristics, timing plan parameters and installation information necessary for TxDOT or the Governmental Entity to incorporate the completed signal installation into the central intersection management software being used.

16.5.4 Permanent Lighting

Supplement Section 16.5.4 of Book 3 with the following:

Developer shall provide a long, continuous layout roll of the plan view. Developer shall provide TxDOT, as a condition to Final Acceptance, the photometric data results for all lighted areas within the Facility limits.

16.5.5 Advance Toll Information Signs

Developer shall prepare and submit to TxDOT, as part of the Final Design Documents, an advance toll information sign plan that includes all components related to Managed Lanes.

16.5.6 Inspection and Acceptance Testing

Developer shall provide to TxDOT, as part of the Final Design Documents, an acceptance test plan (ATP) for all traffic signals and illumination. This ATP shall also be submitted by Developer to the appropriate local Governmental Entity. Developer shall conduct testing in accordance with the ATP and document these results to show conformance with design and construction requirements.

17 INTELLIGENT TRANSPORTATION SYSTEMS

17.1 General Requirements

Supplement Section 17.1 of Book 3 with the following:

The Facility ITS shall conform to the regional data and video communications system (RDVCS) of the North Texas Regional Comprehensive ITS Architecture.

Developer shall maintain and protect the use of the existing ITS within the Facility at all times with the exception of the Segment 3B Facility Segment during construction of the TxDOT Works.

17.2 Design Requirements

Supplement Section 17.2 of Book 3 with the following:

Developer shall prepare a preliminary ITS layout for review and concurrence by TxDOT to ensure adequate planning of the ITS implementation. The planning of the ITS implementation shall make allowance for and take into account the expected date of TxDOT Substantial Completion of the Segment 3B Facility Segment and shall be addressed in the coordination plan in accordance with Section 11.1.1 of the FA.

17.2.1 ITS Communications Requirements

Supplement Section 17.2.1 of Book 3 with the following:

Developer shall provide an independent channel within the ITS communication system to transport traffic signal interconnect communications between roadside traffic signal cabinets maintained by TxDOT and a satellite building data network switching point designated by TxDOT. Communication devices attached to this channel shall be addressed as directed by TxDOT.

17.2.2 Conduit

Supplement Section 17.2.2 of Book 3 with the following:

At a minimum, Developer shall install a conduit system with sufficient capacity for at least the number of conduits within the existing conduit network.

17.2.3 CCTV Cameras

No additional requirements.

17.2.3.1 Equipment

Supplement Section 17.2.2 of Book 3 with the following:

Initial installation of the CCTV field equipment shall conform to the requirements of TxDOT's Statewide Special Specification 6025 CCTV Field Equipment (04) except for training, warranty, measurement and

payment. Any subsequent updates or replacements shall be compatible with the RDVCS requirements.

17.2.3.2 Placement

No additional requirements.

17.2.3.3 Video Requirements

No additional requirements.

17.2.3.4 Operating Requirements

No additional requirements.

17.2.3.5 Control Requirements

No additional requirements.

15.2.1 Vehicle Detection

No additional requirements.

17.2.4 Dynamic Message Signs (DMS)

Replace Section 17.2.5 of Book 3 with the following:

Developer shall provide and operate a comprehensive network of electronic DMS and single-line DMS (SDMS).

Developer shall position each DMS to allow motorists to safely view the messages being displayed.

Developer shall locate the DMS to comply with large guide sign spacing stated in the TMUTCD.

DMS shall be used to inform motorists of the availability of alternate routes, and to advise travelers of adverse road conditions and congestion. DMS shall be placed to provide a driver-friendly sign-viewing angle at each DMS location.

Developer shall provide DMS using only light-emitting diode (LED) display technology. DMS used shall conform to the TxDOT special specification National Transportation Communications for ITS Protocol for Dynamic Message Signs and Developer shall demonstrate compliance to TxDOT before installation of DMS.

DMS shall be uniform and, at a minimum, shall meet the TxDOT-Fort Worth District guidelines.

17.2.4.1 Single-Line DMS (SDMS)

Developer shall place SDMS over through travel lanes on existing or proposed overhead sign structures.

For the Segment 3A Facility Segment, maximum spacing of SDMS shall not exceed one mile, except where a DMS location will satisfy both DMS and SDMS operational requirements and the exception is approved by TxDOT. For the Segment 3B Facility Segment, spacing of SDMS shall be in accordance

with SDMS foundation locations detailed in the Attachment A of Exhibit 26 of the FA.

All sign bridges shall be designed to accommodate SDMS brackets and catwalks.

Developer shall provide LED technology SDMS composed of one-lane-wide, interconnecting modules with lane control signal (LCS) functionality embedded in each module as required to provide individual lane availability information to each through travel lane.

17.2.5 Lane Control Signals (LCS)

Supplement Section 17.2.6 of Book 3 with the following:

The lane control function shall be provided by SDMS. Developer shall provide separate lane control signals only to supplement SDMS installations as directed by TxDOT.

17.2.6 Satellite Buildings

Developer shall coordinate with TxDOT the connection of all new ITS components to the existing ITS satellite buildings covering the Facility and connections to the Fort Worth Traffic Management Center (Transvision Building).

Developer shall maintain and protect the existing satellite buildings within the Facility limits. As necessary, Developer may relocate or reconstruct the satellite buildings.

17.2.7 Center-to-Center Interface

Developer shall provide the center-to-center interface necessary to tie-in to the North Texas Regional Comprehensive ITS Architecture.

17.3 Construction Requirements

No additional requirements.

17.3.1 General

Supplement Section 17.3.1 of Book 3 with the following:

Developer may comply with requirements related to the functionality of the ITS during construction by phasing construction to establish new equipment locations prior to removal of existing equipment locations, allowing minimal service interruption for the transfer of devices from existing to new locations, or by use of portable equivalents for ITS devices, such as trailer mounted DMS, sensors or CCTV, positioned to allow removal of devices while new locations are constructed.

Developer shall coordinate with the Utility Owner(s) to provide power service for permanent ITS components.

17.3.2 Salvaging Existing Items

No additional requirements.

17.3.3 Existing ITS Relocation

Replace the second paragraph of Section 17.3.3 of Book 3 with the following:

Developer is responsible for the relocation of existing ITS within the limits of Work affecting the Segment 3A Facility Segment. Before removing existing ITS items, Developer shall perform all activities necessary to comply with the requirements relating to the ITS during construction, including installing new ITS items, relocating or replacing existing ITS items, and connecting such ITS items to the existing network.

18 TRAFFIC CONTROL

18.1 General Requirements

No additional requirements.

18.2 Administrative Requirements

No additional requirements.

18.2.1 Traffic Management Plan

Supplement Section 18.2.1 of Book 3 with the following:

If at any time TxDOT determines that construction-related back-ups become unreasonable, it shall notify Developer of such determination and Developer shall immediately implement corrective measures. Contingency plans of how this will be determined and occur shall be included in the Traffic Management Plan. The development and implementation of these contingency plans shall be at Developer's expense.

18.3 Design Requirements

18.3.1 Traffic Control Plans

Replace the first sentence of Section 18.3.1 of Book 3 with the following:

Developer shall use the procedures in the TMP and the standards of the TMUTCD to develop and implement detailed traffic control plans which provide for all construction stages and phasing, as well as all required switching procedures.

Replace the third paragraph of Section 18.3.1 of Book 3 with the following:

Opposing traffic on a normally divided roadway shall be separated with appropriate traffic control devices in accordance with Good Industry Practice and the TMUTCD based on the roadway Design Speed.

Supplement Section 18.3.1 of Book 3 with the following:

18.3.1.1 Roadway Guidelines

Developer shall produce traffic control plans for periods of construction based on Good Industry Practice and shall meet or exceed the Facility specific criteria noted in Sections 18.3.1.1.1 and 18.3.1.1.2 below.

18.3.1.1.1 Design Parameters for Traffic Control

Design vehicle: Turning movements at the roadways identified in Table 11-3 shall accommodate a WB-50 design vehicle. Design of all other local streets and driveways shall, at a minimum, accommodate the turning movements of the design vehicle accommodated in the existing configuration.

Design speed: During construction, the Design Speed for General Purpose Lanes and Managed Lanes on Interstate and State Highways must be 55 miles per hour (mph) or greater, except for major alignment transitions where the Design Speed may be reduced to 45 mph if approved by TxDOT.

Number of lanes: Except as allowed by Section 18.3.1.1.2 below, the minimum number of lanes to be maintained during construction in each direction on each Roadway Component of the Facility shall be the number of lanes available prior to such construction on such Roadway Component of the Facility. Lane closures on other roadways may be considered and approved by TxDOT.

Lane widths: During construction, the minimum lane width for Managed Lanes, General Purpose Lanes, Frontage Roads and major crossing streets is 11 feet. For minor crossing streets, TxDOT may, in its sole discretion, allow a lane width of not less than ten feet in limited circumstances during construction for short distances after reviewing the Developer’s traffic control plan.

Shoulders: Developer shall provide a minimum one foot offset from the edge of travel way to the edge of pavement or traffic barrier.

For the Segment 3C Facility Segment:

During the construction of the IH 820 EB to IH 35W NB ML, a temporary detour will be necessary over the existing IH820 EB Managed Lane. During this period, the Managed Lane might be closed temporarily. Therefore, it will be necessary to re-open the “Ramp Zero” just west of Riverside Dr., that currently serves as the entry from the IH820 EB GPL to the NTE Segment 1 Managed Lane. The closure of the IH820 EB ML would need to be done simultaneously with the re-opening of the “Ramp Zero”. The alignment of this temporary detour will comply with a design speed of 35MPH and a 7% grade.

18.3.1.1.2 Allowable Lane/Roadway Closures

When lane closures are necessary, Developer shall use the public information and communication methods available to inform the appropriate Customer Groups (refer to Section 3 of the Technical Provisions).

Closures must be coordinated with adjacent projects.

In addition to the requirements set forth in Section 3.2.7.1 of the Technical Provisions, Developer shall issue a Lane Closure Notice (LCN) to TxDOT and affected Governmental Entities 14 Days prior to the publication of any notices or placement of any traffic control devices associated with lane closures, detour routing or other change in traffic control requiring lane closures except lane closures of less than 24-hour duration. The LCN shall contain the estimated date, time, duration, and location of the proposed Work requiring the lane closure.

If an Emergency condition should occur, Developer shall provide a LCN to TxDOT within two Days after

the commencement of the event for each lane closure. For non-TxDOT controlled facilities, Developer shall immediately notify the controlling Governmental Entity. Developer shall keep TxDOT and affected Governmental Entities informed of any and all changes or cancellations of proposed lane closures prior to the date of their implementation.

A. Lane Closure Prior to Service Commencement

Subject to Section C below, Developer may reduce the number of General Purpose Lanes in accordance with Table 18-1a during non-restricted hours prior to Service Commencement for each applicable Facility Segment. General Purpose Lane closures, including Incident or Emergency lane closures caused by any Developer-Related Entity, other than those permitted in Table 18-1a, will cause Lane Rental Charges to be levied against Developer as specified in Section 3.4 of Exhibit 18 of the FA. Lane rental charges shall not be levied if TxDOT determines in its sole discretion that the lane closure is required in connection with an Incident or Emergency not caused by any Developer-Related Entity.

Table 18-1a: Permitted Lane Closures Prior to Service Commencement

Description of Operations		Permitted Lane Closures ¹		
Category of Work	General Purpose Lanes (One Direction)	Peak Hours ²	Off-Peak Hours ³	Night Time Hours ³
Any work necessary up to NTP2 or NTP2 (3C), as applicable.	5	None	3	3
	4	None	2	2
	3	None	1	1
	2	None	None	1
Work after commencement of construction: Placement of CTB, placement of pavement markings, full depth roadway repair, placement of bridge beams, bridge demolition or similar operations	5	None	3	3
	4	None	2	2
	3	None	1	1
	2	None	None	1
Work after commencement of construction: Adjacent construction, lanes for construction traffic or similar operations	5	None	2	2
	4	None	2	2
	3	None	1	1
	2	None	None	1

<p><u>Notes:</u></p> <ol style="list-style-type: none"> 1. A minimum of 2 lanes in each direction will be required on IH820, IH35W, SH121, US 287 and SH 170 General Purpose Lanes at all times except as specifically approved by TxDOT. 2. Peak Hours means the Weekday AM Peak Hours, Weekday PM Peak Hours and Weekend Peak Hours as described in <u>Exhibit 1 of the FA</u>. 3. Night Time / Off-Peak Hours means the Night Time Hours and Weekday Off-Peak Hours, respectively, as described in <u>Exhibit 1 of the FA</u>.
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If exceptional circumstances exist, additional lanes may be closed during Off -Peak or Night Time Hours with the written permission of TxDOT at its sole discretion and lane rental charges may apply. Off-Peak Hours may be started earlier or extended later with TxDOT approval.

Developer shall obtain prior written approval from TxDOT for any reduction in the existing number of Frontage Road or major crossing street lanes as defined in Table 18-2 prior to any such reduction.

B. Lane Closure after Service Commencement

Subject to Section C below, Developer may reduce the number of General Purpose Lanes for work activities occurring after Service Commencement for each Facility Segment in accordance with Table 18-1b.

Table 18-1b: Permitted Lane Closures after Service Commencement

Description of Operations		Permitted Lane Closures ¹		
Category of Work	General Purpose Lanes (One Direction)	Peak Hours ²	Off-Peak Hours ³	Night Time Hours ³
Placement of CTB, placement of pavement markings, full depth roadway repair, placement of bridge beams, bridge demolition or similar operations	5	None	1	2
	4	None	1	2
	3	None	None	1
	2	None	None	1
Adjacent construction, lanes for construction traffic or similar operations	5	None	1	2
	4	None	1	2
	3	None	1	1
	2	None	None	1

Notes:

1. A minimum of 2 lanes in each direction will be required on IH820, IH35W and SH 170 and a minimum of 3 lanes in each direction will be required for SH121 and SH183 at all times except as noted above and as specifically approved by TxDOT.
2. **Peak Hours** means the Weekday AM Peak Hours, Weekday PM Peak Hours and Weekend Peak Hours as described in Exhibit 1 of the FA. From and after the Service Commencement Date for each Facility Segment, Peak Hours for such Facility Segment shall be evaluated on an annual basis and the Peak Hours will be adjusted as necessary.
3. **Night Time / Off-Peak Hours** means the Night Time Hours and Weekday Off-Peak Hours, respectively, as described in Exhibit 1 of the FA. From and after the Service Commencement Date for a Facility Segment, times will be established for such Facility Segment utilizing 7 day-24 hour traffic counts to be performed by Developer, results of which shall be provided to TxDOT for evaluation.

If exceptional circumstances exist, additional lanes may be closed during Off Peak or Night Time Hours with the prior written permission of TxDOT at its sole discretion. Off-Peak Hours may be started earlier or extended later with TxDOT approval.

Developer shall obtain written approval from TxDOT for any reduction in the existing number of Frontage Road or major crossing street lanes as defined in Table 18-2 prior to any such reduction.

C. Full Roadway Component Closure

In no event shall closure of all General Purpose Lanes in one or both directions be allowed except during Night Time Hours, during weekend hours other than Weekend Peak Hours, to the extent due to an Incident or Emergency not caused by any Developer-Related Entity, or with the express written approval by TxDOT and Governmental Entities having jurisdiction of roadways affected by the closure. Whenever all General Purpose Lanes are closed Developer shall provide traffic-controlled detours on the adjacent frontage road. The detour route for full General Purpose Lane closures shall not be tolled. TxDOT will have the right to lengthen, shorten, or otherwise modify the foregoing restrictions as actual traffic conditions may warrant. Major crossing streets, as listed in Table 18-2, must remain open to traffic in both directions during the Term and in accordance with Table 18-2. Any violation of this Section C shall entitle TxDOT to declare a Developer Default, exercise remedies under Section 17.3.2 of the Agreement, and exercise any other remedies available under the Agreement, in addition to assessing Lane Rental Charges.

Table 18-2 List of Major Crossing Streets

CROSSING STREET	CLASSIFICATION	Overpass/Underpass	Lanes to be maintained during peak hours
Basswood Blvd	Major	Overpass	3EB + 3WB
Western Center Blvd	Major	Underpass	2EB + 2WB
Mark IV Parkway	Major	Underpass	2EB + 2WB
Meacham Blvd	Major	Underpass	2EB + 2WB
E. Long Ave.	Major	Underpass	1EB + 1WB
NE 36 th St	Major	Underpass	1EB + 1WB
NE 33 rd St	Major	Underpass	1EB + 1WB
Papurt Dr. ¹	Major	Underpass	1EB + 1WB
SH183/NE 28 TH St	Major	Overpass	2EB + 2WB
Watauga Rd	Major	Underpass	1EB + 1WB
E. Northside Dr. (WB) / Yucca Ave. (EB)	Major	Underpass	2EB + 2WB
Turnaround at Trinity River	Major	Underpass	2
Pharr St	Major	Underpass	1EB + 1WB
SH 121	Major	Underpass	2EB + 2WB
E. 4 th St	Major	Underpass	1EB + 1WB
Spur 280	Major	Overpass	2EB + 2WB
Luella St	Major	Underpass	1EB + 1WB
Cypress Rd over Spur 280	Major	Overpass	1NB + 1SB
Alliance Blvd	Major	Overpass	1EB + 1WB
Westport Pkwy	Major	Underpass	1EB + 1WB

CROSSING STREET	CLASSIFICATION	Overpass/Underpass	Lanes to be maintained during peak hours
SH 170 Alliance Gateway Fwy	Major	Overpass	2EB + 2WB
Keller Hicks Rd	Major	Underpass	1EB + 1WB
Golden Triangle Blvd	Major	Underpass	2EB + 1WB
Heritage Trace Pkwy	Major	Overpass	2EB + 2WB

1. Crossing at Papurt Drive to remain open until alternative provided.

Developer will be allowed to close entrance and exit ramps except that no two consecutive entrance or two consecutive exits can be closed at the same time.

Existing direct connectors shall remain open to traffic until replacement direct connectors are constructed and open to traffic.

18.3.1.2 Restricted Hours

A. Holiday Restrictions

No work that restricts or interferes with traffic shall be allowed from 12:00 noon on the day preceding to 10:00 pm on the day after the following holiday schedule. TxDOT has the right to lengthen, shorten, or otherwise modify these restrictions as actual traffic conditions may warrant.

- New Year’s Eve and New Year’s Day (December 31 through January 1)
- Easter Holiday Weekend (Friday through Sunday)
- Memorial Day Weekend (Friday through Monday)
- Independence Day (July 3 through noon on July 5)
- Labor Day Weekend (Friday through Monday)
- Thanksgiving Holiday (Wednesday through Sunday)
- Christmas Holiday (December 23 through 26)

B. Event Restrictions

No work that restricts or interferes with traffic shall be allowed for the regional events set forth below. TxDOT has the right to lengthen, shorten, or otherwise modify these restrictions as actual traffic conditions may warrant. TxDOT also has the right to modify the list of major events as they are added, rescheduled or warranted.

- NASCAR Nationwide and Sprint Cup Racing Series (3 races total) at Texas Motor Speedway

usually held in late March/early April (restricted from 3:00 p.m. before the night preceding the first event until Monday 5:00 a.m. following the event).

- NASCAR Nationwide and Sprint Cup Racing Series (3 races total) at Texas Motor Speedway usually held in late October/early November (restricted from 3:00 p.m. before the night preceding the first event until Monday 5:00 a.m. following the event).
- Indy Series Racing and NASCAR Truck Series Racing (2 races) at Texas Motor Speedway usually held in June (restricted from 3:00 p.m. before the night preceding the first event until Monday 5:00 a.m. following the event).

C. Remedies

Any violation of Section A or B above shall entitle TxDOT to declare a Developer Default, exercise remedies under Section 17.3.2 of the Agreement, and exercise any other remedies available under the Agreement, in addition to assessing Lane Rental Charges.

18.3.1.3 Other Traffic Management Plan Requirements

Additional Traffic Management Plan requirements are as follows:

- 1) Developer shall notify the traveling public by placing changeable message signs a minimum of seven Days in advance of actual roadway closure or major traffic modifications. Where available and when possible, Developer shall coordinate and utilize Dynamic Message Signs on the regional ITS system.
- 2) Developer shall utilize uniformed police officers for General Purpose Lane closures.

18.4 Construction Requirements

No additional requirements.

18.4.1 Developer Responsibility

No additional requirements.

18.4.2 Access

No additional requirements.

18.4.3 Detours

Supplement Section 18.4.3 of Book 3 with the following:

Developer shall use State routes for detour routes, wherever applicable. If State routes are unavailable, Developer shall use local arterials, provided that Developer has obtained the necessary permits from the Governmental Entity having jurisdiction. Under no circumstances shall Developer use local arterials for detour routes without the prior written approval by TxDOT.

Developer shall provide motorists with appropriate guidance, including signing, on diverting around the construction, detouring around specific construction sites, and traveling through the construction areas. This shall include the installation and maintenance of temporary regional signs to divert traffic

18.4.3.1 Local Approvals

Developer shall communicate any planned ramp closure within the Facility and staging analysis with the Governmental Entity having jurisdiction. When ramp movements are diverted or detoured along existing roads, Developer shall be responsible for obtaining the necessary approvals from Governmental Entities having jurisdiction over the routes used. Developer shall also be responsible for any and all costs that may be assessed for the use of these existing roads.

19 MAINTENANCE

Replace Section 19 of Book 3 in its entirety with the following:

19.1 General Requirements

Developer shall maintain the Facility in a manner that provides a safe and reliable transportation system for improved mobility. Developer is responsible for performing all activities necessary to satisfy the Performance Requirements and the Handback Requirements with respect to the maintained Elements, together with other duties described in this Section 19 of the Technical Provisions.

19.1.1 General Maintenance Obligations

Developer shall take all necessary actions to achieve the following:

- Maintain the Facility and Related Transportation Facilities in a manner appropriate for a facility of the character of the Facility.
- Minimize delay and inconvenience to Users and, to the extent Developer is able to control, users of related Transportation Facilities.
- Identify and correct all Defects and damages from Incidents.
- Monitor and observe weather and weather forecasts to proactively deploy resources to minimize delays and safety hazards due to heavy rains, snow, ice, or other severe weather events.
- Remove debris, including litter, graffiti, animals, and abandoned vehicles or equipment from the Facility ROW.
- Minimize the risk of damage, disturbance, or destruction of third-party property during the performance of maintenance activities.
- Coordinate with and enable TxDOT and others with statutory duties or functions in relation to the Facility or Related Transportation Facilities to perform such duties and functions.
- Perform systematic Facility inspections, periodic maintenance, and routine maintenance in accordance with the provisions of Developer's Maintenance Management Plan and Developer's Safety Plan.

Developer is responsible for providing all resources necessary for the performance of all activities in the Maintenance Management Plan.

Developer shall perform the maintenance of the Managed Lanes and the General Purpose Lanes in an identical manner.

Developer shall repair, if necessary, and resurface, including restriping, all flexible pavements that are not

being reconstructed under the Initial Mandatory Scope or Mandatory Scope as shown on the Initial Mandatory Scope Schematics and Mandatory Scope Schematics. The resurfacing shall be a minimum 2” overlay.

19.1.2 Developer’s Obligation to Remedy and Repair

19.1.2.1 Performance Requirements of Existing Elements from NTP2 or NTP2 (3C) to Substantial Completion

Developer is responsible for operations and maintenance of all Elements within the limits of the Facility in accordance with Table 1-7 including the existing Elements. For the avoidance of doubt, “existing” means Elements in place and operating, in the Segment 3A Facility Segment and Segment 3C Facility Segment, prior to commencement of construction of the respective Work for such Facility Segment, and in Segment 3B Facility Segment, prior to commencement of construction of the TxDOT Works.

In taking over operations and maintenance of existing facilities, Developer shall perform an inspection and evaluation of the asset conditions for existing infrastructure and existing improvements and establish the Asset Condition Score within 90 days after the Operating Commencement Date for each Facility Segment in accordance with Table 19-1, Performance and Measurement Table Baseline. TxDOT will make available to Developer any maintenance records in TxDOT’s possession that will assist in establishing the Asset Condition Score. Table 19-1, Performance and Measurement Table Baseline is included as Attachment 19-1 of the Technical Provisions. Refer to Section 19.4.6 of the Technical Provisions for additional requirements regarding the Asset Condition Score.

Developer shall prepare and submit to the Independent Engineer and TxDOT for review and comment a Work plan that demonstrates how the Performance Requirements for each Element, with the exception of all flexible pavements that are not being reconstructed under the Initial Mandatory Scope as shown on the Initial Mandatory Scope Schematics, having an asset condition not meeting the Performance Requirements specified in Table 19-1 identified from the inspection and evaluation described above will be fully met and maintained by the Substantial Completion date for each Facility Segment. Developer shall submit the Work plan to TxDOT within 30 days of the completion of the inspection and evaluation described in the paragraph above.

Developer shall take necessary action such that the Category 1 Defect hazards to motorists are mitigated within the period given in the column entitled “Cat 1 Hazard Mitigation” in Table 19-1.

Developer shall take necessary action to maintain and repair, as necessary, Elements such that the Pavement Condition Score for Element Category 1.2 shall not be less than 50.

Developer shall take necessary action to maintain and repair, as necessary, Elements such that the free cross-sectional area for Element Category 2.1 shall not be less than 70%.

Developer shall maintain all flexible pavements that are not being reconstructed under the Initial Mandatory Scope as shown on the Mandatory Scope Schematics and Initial Mandatory Scope Schematics such that the Asset Condition Score determined in accordance with this [Section 19.1.2.1](#) shall be achieved from the Operating Commencement Date to Substantial Completion for each Facility Segment.

19.1.2.2 Performance Requirements of Temporary Ramps and Diversions

Developer shall maintain temporary Work for the maintenance of traffic during Construction Work and/or Renewal Work in a safe, functional and fair condition meeting the requirements of TxDOT standards and Good Industry Practice.

19.1.2.3 Performance Requirements after Substantial Completion

After the Service Commencement Date of a Facility Segment, or after any early opening of part of a Facility Segment, and continuing thereafter throughout the Term, Developer shall maintain the Elements in accordance with [Table 19-1](#). In meeting the requirements of [Section 19](#) of the Technical Provisions, where a Category 1 Defect is revealed by any inspection or is otherwise brought to the attention of Developer, Developer shall take immediate steps to alert Users to the hazard and shall categorize, correct, make safe and repair the Defect in accordance with [Table 19-1](#).

For Category 1 Defects, Developer shall:

- Take necessary action such that the hazard to Users is mitigated within the period given in the column entitled “Cat 1 Hazard Mitigation” in [Table 19-1](#).
- Permanently remedy the Defect within the period given in the column entitled “Cat 1 Permanent Remedy” in [Table 19-1](#).

For Category 2 Defects, Developer shall undertake the permanent repair within the period specified in the column entitled “Cat 2 Permanent Repair” in [Table 19-1](#).

Developer shall maintain all flexible pavements that are not being reconstructed under the Initial Mandatory Scope as shown on the Initial Mandatory Scope Schematics or Mandatory Scope Schematics such that the Asset Condition Score determined in [Section 19.1.2.1](#) of the Technical Provisions shall be achieved throughout the Term.

19.1.3 TxDOT Obligation to Remedy and Repair

Until NTP2 or NTP2 (3C), as applicable, TxDOT will reasonably perform the type of routine maintenance of each Element Category which is normally included as an annually recurring cost in the TxDOT Highway maintenance and repair budgets including repairs required to restore asset condition following accidents and Incidents. TxDOT is not obligated to extend the Residual Life of any Element through reconstruction, rehabilitation, restoration, renewal, or replacement.

19.1.4 Transition of Maintenance

Developer shall coordinate with TxDOT to achieve a smooth transition of maintenance activities from TxDOT. Developer shall assume full responsibility for all maintenance activities on the Segment 3A Facility Segment and Segment 3C Facility Segment on their respective Operating Commencement Dates and from TxDOT Substantial Completion of the Segment 3B Facility Segment as described in Section 8.3 of the FA.

19.2 Maintenance Management Plan (MMP)

Developer shall prepare a Maintenance Management Plan (MMP) that sets out how Developer will comply with the maintenance obligations described in Section 19.1 of the Technical Provisions and defines the process and procedures for the maintenance of the Facility for the Term of the FA. The MMP shall include performance requirements, measurement procedures, threshold values at which maintenance is required, inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies, for each physical Element of the Facility in accordance with Table 19-1, including impacts to Related Transportation Facilities. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects. Response times shall be in accordance with Table 19-1, or lower. Developer shall differentiate response times for Defects that require prompt attention due to immediate or imminent damage or deterioration, excluding those items which have no impact on any parties other than Developer, and response times for other Defects. Developer shall submit the MMP to TxDOT for review and approval at least 60 Days prior to the issuance of NTP1. Approval by TxDOT of the MMP shall be a condition of NTP1. Developer shall update the approved MMP as required, or at least annually, and such updates shall be subject to TxDOT's review and approval. Without limiting the foregoing, Developer shall submit to TxDOT for review and approval an update of the MMP to take into account the Segment 3C Facility Segment; and TxDOT's approval of such update shall be a condition precedent to commencing Design Work for the Segment 3C Facility Segment. Developer shall comply with all aspects of the approved MMP as updated from time to time with TxDOT's approval.

The MMP shall include procedures for managing records of inspection and maintenance activities, including appropriate measures for providing protected duplication of the records. Developer shall keep inspection and maintenance records for the Term of the FA and shall provide such record to TxDOT at the time the Facility is delivered to TxDOT, at either expiration of the Term or earlier termination of the FA.

Developer shall use the results of the inspections described in its MMP and other relevant information to determine, on an annual basis, the estimated Useful Life and estimated Residual Life of each Element of the Facility. From this, Developer shall update the scope of the Renewal Work Schedule as more particularly provided in Section 8.6.1 of the FA. Renewal Work shall be performed at the point in time

necessary to establish a Useful Life for each Element that will avoid deterioration of any Element to the extent that such deterioration would cause non-compliance with a Performance Requirement.

19.2.1 Additional Requirements

The MMP shall address, but shall not necessarily be limited to, the following:

- a) Maintenance and service manual
- b) Spare parts
- c) Inventory control
- d) Maintenance Management Information System (MMIS) functionality
- e) Software maintenance
- f) Special tools and equipment
- g) Defect tracking and corrective action
- h) Reliability and maintainability analysis
- i) Vendors for equipment and maintenance services
- j) Retaining wall monitoring

The Developer shall include in the MMP how the following specific obligations are implemented:

- a) Preventative maintenance

Developer shall adhere to the minimum standards as determined by the equipment manufacturer's recommended maintenance schedule and operating procedures.

- b) Maintenance and service manual

Developer shall prepare and update a maintenance and service manual in both printed and electronic file format (searchable PDF). The manual shall be comprehensive and shall include, but not be limited to, detailed technical maintenance and servicing descriptions for all major and safety critical components as well as equipment that is specialized to meet the needs of the Facility. The manual shall include preventive maintenance schedules, testing and troubleshooting techniques, corrective measures, both temporary and permanent, the location and availability of support services, point to point component wiring schematics and logic signal flows, assembly and disassembly drawings, including exploded view drawings.

Standard service manuals for unmodified commercial products are acceptable for inclusion in the MMP provided that they contain details and accurate information in order to properly service the specific equipment supplied under the FA. Large size diagrams and mechanical assembly

diagrams need not be reduced or incorporated into the manual if these drawings are delivered with the manuals.

c) Spare Parts and inventory levels

Developer shall maintain a comprehensive, accurate, and auditable parts and spares inventory adequate to address the maintenance obligations. This information contained in the inventory shall be compatible with the Maintenance Management Information System (MMIS) as described in Section 19.5.3 of the Technical Provisions.

d) Maintenance records

Developer shall prepare quarterly, one-year and five-year maintenance Work plans for the Operating Period. The five-year maintenance Work plan is to be updated each year and include anticipated and actual renewal activities to take place within the five-year period. The one-year maintenance Work plans shall be updated every quarter and shall include a rolling 12-month maintenance Work plan.

As the maintenance Work plans are implemented, Developer shall manage records of inspection and maintenance activities as related to the maintenance Work plans in accordance with Section 19.2 of the Technical Provisions and with the FA Documents.

In respect of this requirement, a maintenance Work plan means a detailed plan that identifies all maintenance activities that will be undertaken during a specified period, including a schedule of the associated road closures expected.

19.2.2 Standard of Remedy or Repair

The remedy or repair of any Element shall meet or exceed the standard identified in the column entitled “Target” in Table 19-1 and an O&M Record shall be created by Developer to verify that this requirement has been met.

19.2.3 Accident Reduction Program

Developer shall implement an accident monitoring and reduction program in accordance with FHWA requirements and Good Industry Practice.

19.2.4 Highway Conditions Report System

Developer shall report to TxDOT Highway and weather conditions every workday morning by 6:10 a.m. and update the information as needed to TxDOT and include this information on the Developer’s web page at the time of being reported to TxDOT.

The following types of information are to be reported:

- a) Highway conditions which close or reduce the number of available travel lanes in one direction or create hazardous travel including construction or maintenance sites, roadway or right of way damage, major accidents or hazardous spills; and
- b) Weather-related events which may cause unsafe driving conditions such as ice, sleet, snow, floods, high winds or hurricanes.

19.2.5 Renewal of Elements

The following conditions are considered Defects and Developer shall address these in accordance with the response times shown in Table 19-1:

- a) The Asset Condition Score of an Element is below 3 as described in Table 19-4, except for asphalt and concrete pavement.
- b) For asphalt and concrete pavement, other than existing pavement to remain in place at the locations specified in Section 1.1.1 of the Technical Provisions, rehabilitation must be initiated when any of the following occur:
 - 1) The pavement condition rating on any one-mile continuous segment:
 - Falls below 75 for Managed Lanes, General Purpose Lanes and ramps
 - Falls below 65 for Frontage Roads
 - 2) International Roughness Index (IRI) on any one-mile continuous segment is greater than:
 - 145 for Managed Lanes, General Purpose Lanes and ramps
 - 155 for Frontage Roads
- c) The “reliability” is less than 99.9% for any safety critical Element. Such an Element is defined as one that, should it fail, the safe operation of any aspect of the Facility would be in jeopardy or an immediate or imminent safety hazard would result.
- d) The “reliability” is less than 90% for an Element other than a safety critical Element.
- e) The Element ceases to function, or dies (as in the case of certain landscaping).
- f) The frequency of repair is higher than that recommended in the manufacturer’s preventive maintenance schedule.

“Reliability” is calculated as the in-service time over a prescribed time period. For example, if an Element is out of service for 20 Days of 365 Days, its “reliability” is 94.5% (i.e. $(365 - 20)/365 \times 100\%$). Developer shall apply the reliability measurement over a moving 365 Days.

All renewed Elements shall meet all applicable code requirements and industry design standards at the time of completion of the Renewal Work for the particular Element.

19.2.6 Mitigation for Severe Weather Events

In addition to the obligations of Section 19.1.1 of the Technical Provisions to monitor and observe weather and weather forecasts and to proactively deploy resources accordingly for weather events, Developer's MMP shall establish the means by which all the Facility's Roadway Components are to be managed to minimize delays and safety hazards in the event of any severe weather event.

19.3 Handback Requirements

Developer shall prepare a Handback Plan that contains the methodologies and activities to be undertaken or employed to meet the Handback Requirements. Developer shall submit the Handback Plan, including a Residual Life Methodology plan, to TxDOT for review and approval no later than the first day of the fifth full calendar year before the anticipated Termination Date.

Table 19-2, Residual Life Requirements, defines the number of years of Residual Life that certain Elements must have at the Termination Date (the "Required Residual Life"). Table 19-2, Residual Life Requirements, is included as Attachment 19-2 of the Technical Provisions. Table 19-2 shall be populated throughout the Term to define the Required Residual Life of all applicable Elements if it is deemed certain Elements are not included. For any Element of the Facility for which a "Required Final Residual Life" is not specified in Table 19-2, the Required Residual Life for the Element at the Termination Date shall equal the documented serviceable life of the Element or five years, whichever is less.

Developer shall perform an initial, an intermediate, and a final Residual Life Inspection that covers all physical Elements within the Facility as noted below. Within 30 Days following performance of each Residual Life Inspection, Developer shall submit to TxDOT the findings of the inspection, Residual Life test results and Residual Life calculations, as more particularly described in Section 8.10.1.2 of the FA.

On the Termination Date, Developer shall certify in writing to TxDOT that all physical Elements of the Facility other than those Elements for which Developer exercised its option pursuant to Section 8.10.1.2 of the FA meet or exceed their respective Required Residual Life.

19.3.1 Residual Life Inspections

Developer shall perform Residual Life Inspections and testing with appropriate coverage such that the results are representative of the whole Facility as described in Table 19-2. Developer shall give TxDOT the opportunity to witness any of the inspections and/or tests and shall give a minimum of ten Business Days' notice prior to the performance of any such tests. Developer shall deliver to TxDOT, within ten Business Days after it is created, the output data arising from any testing and any interpretation thereof made by the testers.

19.3.1.1 Initial Residual Life Inspection

Between 63 and 60 months prior to the end of the Term, Developer shall perform an initial Residual Life

Inspection including all Elements set forth in Table 19-2. Within 30 Days following performance of the initial inspection, Developer shall submit the initial inspection report to TxDOT which will contain the findings of the inspection, including Residual Life test results, a report(s) by an independent testing organization(s), and Developer's calculation of Residual Life at Handback for each inspected Auditable Section.

19.3.1.2 Intermediate Inspection

Between 21 and 18 months before the end of the Term, Developer shall perform an intermediate Residual Life Inspection including all Elements within the Facility, regardless of whether Developer has undertaken Renewal Work for a particular Element in the period since the initial inspections. Within 30 Days following performance of the intermediate inspection, Developer shall submit the intermediate inspection report to TxDOT, which will contain the findings of the inspection.

19.3.1.3 Final Inspection

Between 90 and 30 Days before the end of the Term, Developer shall perform a final Residual Life Inspection including all Elements within the Facility, regardless of whether Developer has undertaken Renewal Work for a particular Element in the period since the initial and intermediate inspections. Within 30 Days following performance of the final inspection, Developer shall submit the final inspection report to TxDOT, which will contain the findings of the inspection.

19.3.2 Renewal Work Schedule for Handback Requirements

The Renewal Work Schedule for each of the five years before the end of the Term shall include, in addition to other requirements specified in the FA Documents:

- Developer's calculation of Residual Life for each Element calculated in accordance with the Residual Life Methodology and taking into account the results of the inspections set forth above.
- The estimated cost of the Renewal Work at the end of its Residual Life for each Element for which Developer exercised its option under Section 8.10.1 of the FA.

Refer to Section 2.1.8 of the Technical Provisions for additional information regarding the Renewal Work Schedule.

19.4 Inspections

Developer shall cause trained and competent personnel to plan and implement a program of inspections of the Facility which:

- Verifies the continuing safety of the Facility for Users.
- Prioritizes Defects requiring immediate and urgent attention because they are likely to create a danger or serious inconvenience to Users (Category 1 Defects).

- Identifies Category 2 Defects to be included for repair either within Developer’s annually recurring Highway maintenance and repair program or as Renewal Work.
- Is responsive to reports or complaints received from Customer Groups.
- Takes account of Incidents and Emergencies affecting the Facility.
- Monitors the effects of extreme weather conditions.
- Collates data to monitor performance of the Facility and to establish priorities for future maintenance operations and Renewal Work.

Developer shall ensure that personnel performing inspections of road pavements and structures are certified as inspectors and/or raters in accordance with the FA Documents.

19.4.1 Inspection Frequency

Developer shall establish an annual schedule for Inspections which will be appropriately spaced throughout the year. After periods of inclement weather or other events which may cause accelerated deterioration of the asset, safety hazards or other detrimental impacts to the Facility, Developer shall conduct comprehensive visual surveys which will identify all such areas of concern.

Developer shall establish inspection procedures and perform inspections so that:

- All Category 1 Defects are identified and remedied such that the hazard to Users is mitigated within the period given in the column entitled “Category 1 Hazard Mitigation” in Table 19-1.
- All Category 1 Defects are identified and permanently remedied within the period given in the column entitled “Category 1 Permanent Remedy” in Table 19-1.
- All Category 2 Defects excluding those items which have no impact on any parties other than Developer are identified and permanently repaired within the period given in the column entitled “Category 2 Permanent Repair” in Table 19-1.

The periods stated in Table 19-1 under each of the above headings shall be deemed to start upon the date Developer first obtained knowledge of, or first reasonably should have known of, the Defect. For this purpose Developer shall be deemed to first obtain knowledge of the failure not later than the date of delivery of the initial notice to Developer. Developer shall investigate reports and complaints on the condition of the Facility received from all sources. Developer shall record these as O&M Records together with details of all relevant inspections and actions taken in respect of Defects, including temporary protective measures and repairs.

19.4.2 Inspection Standards

In performing inspections to identify Category 1 and Category 2 Defects, Developer shall, for any Element defined in the column entitled “Element” in Table 19-1, conform at a minimum to the inspection standards set forth for that Element in the column entitled “Inspection and Measurement Method” in

Table 19-1.

19.4.3 General Inspections

Developer shall perform General Inspections in accordance with the MMP so that the repairs of all Defects are included in planned programs of work.

O&M Records in respect of General Inspections shall include details of the manner of inspection (e.g. center lane closure or shoulder), the weather conditions and any other unusual features of the inspection.

General Inspections shall be performed such that Category 2 Defects are identified and repaired within the period shown in Table 19-1 or, if the Defect is not specified in Table 19-1, within six months of the Defect occurring; provided that Defects which require special equipment to identify or are listed under the heading of Specialist Inspections in Section 19.4.4 of the Technical Provisions may have different identification periods.

19.4.4 Specialist Inspections

Developer shall undertake Specialist Inspections for Elements listed in Table 19-3 below and shall include the inspection results as O&M Records.

Table 19-3 – Specialist Inspections

Element	Frequency
Roadway	Annual survey of pavement condition for the entire Facility, including mainlines, ramps, and Frontage Roads, undertaken using automated condition survey equipment to measure all necessary criteria including: ruts, skid resistance and ride quality according to the inspection and measurement methods set forth in <u>Table 19-1</u> .
Bridges	Inspections and load rating calculations at the frequency specified in the Technical Documents. In addition, NBIS inspections as per FHWA Laws and at the frequency specified in FHWA regulations.
Electrical supplies to lighting, signs, traffic signals and communications equipment	Inspections as required by FHWA or electrical Laws.
Toll equipment	Inspections as required by the equipment manufacturer.

19.4.5 Audit Inspections

Developer shall undertake detailed inspections of randomly selected Auditable Sections for audit purposes (the "Audit Inspections") at least once quarterly following the initial inspection and evaluation of existing Elements and improvements described in Section 19.1.2.1 of the Technical Provisions. On each occasion that an Audit Inspection is undertaken, the inspection shall include at least five percent of the total available Auditable Sections. Developer shall assess the condition of each Element of the

Facility, as set forth in the column entitled “Element” in Table 19-1 using the inspection and measurement method set forth in the column entitled “Inspection and Measurement Method”. Audit Inspections shall include physical inspection of those Elements that are safely accessible without traffic control. Where the measurement method would require specialist equipment or would require traffic lane closures to implement, Developer shall assess the condition of the relevant Element by reference to the current O&M Records held in Developer’s database.

Developer shall create a new O&M Record for each Element physically inspected in accordance with the column entitled “Measurement Record” in Table 19-1. Developer shall undertake Audit Inspections on a schedule agreed to with the Independent Engineer on Auditable Sections randomly selected by the Independent Engineer. The Independent Engineer shall be given the opportunity, with seven Days’ notice, to accompany Developer when it undertakes the physical inspections associated with the Audit Inspection.

In taking over operations and maintenance of existing facilities Developer shall establish the Asset Condition Score for the existing facilities by initiating 100% Audit Inspections of existing facilities within 90 Days after the applicable Operating Commencement Date. TxDOT will make available to Developer any maintenance records in TxDOT’s possession that will assist in establishing the Asset Condition Score.

19.4.6 Asset Condition Score by Developer

Within ten Days following each Audit Inspection, Developer shall assess its achievement of the Performance Requirements by self-scoring against the Targets set forth in Table 19-1, the Performance and Measurement Table Baseline.

Developer shall report quarterly to TxDOT and the Independent Engineer an Asset Condition Score to include, for each Element Category, all of the Auditable Sections inspected in the most recent Audit Inspection. Developer shall assess the Asset Condition Score according to the measurement criteria set forth in Table 19-4 below.

Table 19-4 Asset Condition Score Criteria for Element Categories

(Reported quarterly for each Element Category for all inspected Auditable Sections)

Score	Criteria
5	<ul style="list-style-type: none"> • Targets for individual Elements are almost entirely met (95% to 100% compliance with the relevant Targets for each Element within each Auditable Section), and • Is fully functional and in nearly new condition, meeting or exceeding Performance Requirements.
4	<ul style="list-style-type: none"> • Targets for individual Elements are substantially met (less than 95% compliance and 90% or greater compliance with the relevant Targets for each Element within

Score	Criteria
	each Auditable Section), and <ul style="list-style-type: none"> • Is functional and in good condition, meeting Performance Requirements.
3	<ul style="list-style-type: none"> • Targets for individual Elements are mostly met (less than 90% compliance and 75% or greater compliance with the relevant Targets for each Element within each Auditable Section), and • Is in fair condition, but suggesting need for early replacement, renewal or repair of individual Element and/or maintenance or operation improvement action to meet Performance Requirements.
2	<ul style="list-style-type: none"> • Targets for individual Elements are barely met (less than 75% compliance and 50% or greater compliance with the relevant Targets for each Element within each Auditable Section), or • In poor condition demonstrating need for immediate replacement, renewal or repair of individual Element and/or immediate change to Facility Management Plan.
1	<ul style="list-style-type: none"> • Targets for individual Elements are not met ((less than 50% compliance with the relevant Targets for each Element within each Auditable Section), or • In very poor condition demonstrating need for immediate replacement, renewal or repair of individual Element and/or immediate change to Facility Management Plan.

Notes:

1. The Asset Condition Score for any Element Category shall be determined by the lowest Asset Condition Score for any Element within the Element Category. The calculation of Asset Condition Score is demonstrated by the following example:

Assume there are 520 Auditable Sections, of these 5%, or 26 are audited each quarter. There are five Targets to be assessed for Element “pavement markings”. There are therefore, 5 x 26 = 130 measurement records for pavement markings. If 125 of these measurement records meet the Target, there would be 96% compliance and an Asset Condition Score of five assigned to the Element. However, if one of the remaining Elements in the Element Category achieves an Asset Condition Score of four the Asset Condition Score for the Element Category will be four.
2. The mean of the Asset Condition Scores across Elements in any Element Category shall be calculated to 1 decimal point and also recorded.
3. Where a measurement record relates to a service measured over time or an Element that is not represented in more than 25% of Auditable Sections, then the Asset Condition Score shall be based on the total service and not a 5% random sample. This applies to the performance measurement of Element Categories as follows, or other Element Categories meeting the above criteria identified following establishment of Auditable Sections:

- 3-Structures
- 7-Traffic Signals
- 13-ITS and ETCS Equipment
- 14-Tolling Facilities and Buildings (Not Used)
- 16-Snow and Ice Control
- 17-Incident Response
- 18-Customer Response

Pavement Condition Score is a component of Asset Condition Score for Element Category “Pavement”, but Pavement Condition Score shall also be reported annually for the entire Facility.

4. Developer acknowledges that Asset Condition Score is a mechanism to benchmark the performance of the Facility against the performance of other similar facilities and that TxDOT may, during the Term, alter the Asset Condition Score criteria to reflect Good Industry Practice.
5. “Mean” in this context shall be the arithmetic mean.

Each Asset Condition Score of less than three or mean Asset Condition Score across Elements of less than 3.5 (for any Element Category) is deemed a noncompliance that may result in assessment of Noncompliance Points (see [Exhibit 18 of the FA](#)).

19.5 Highway Location and Data Requirements

19.5.1 Texas Reference Marker System (TRMS)

Developer shall implement the *Texas Reference Marker System*.

19.5.2 Establishment of Auditable Sections

The entire Facility and all Work shall be subject to Auditable Sections. Developer shall establish Auditable Sections referenced to the *Texas Reference Marker System*. Developer shall establish and prepare plans identifying the Auditable Sections. The plans shall identify the boundaries of each Auditable Section and shall cross reference to an inventory describing each Element of the Facility contained within each Auditable Section. Developer shall submit these plans no later than 30 days prior to commencement of initial inspections. Initial inspections shall take place by the Operating Commencement Date for each Facility Segment.

19.5.3 Maintenance Management Information System (MMIS)

Developer shall implement a computer based MMIS to record inventory, failures, repairs, maintenance activities and inspections performed. Developer shall enter all of the physical Elements into the MMIS with Element ID consistent with those descriptions and units of measure used by TxDOT. All information shall be recorded by Developer in a consistent manner and shall be searchable by individual attribute.

Developer shall include relevant physical Element information in the MMIS including but not limited to,

location, equipment nomenclature, serial number, name, date of installation, 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 mean time between failure and mean time to repair. The MMIS shall be configured to report work by TxDOT function code, physical Element, reference marker, crew and unit of measurement.

In the MMIS, the information for bridges shall include National Bridge Inventory (NBI) sheets.

The MMIS shall be capable of reporting system performance on a geographical basis to demonstrate compliance with operational and maintenance requirements. The MMIS shall incorporate a Geographical Information System (GIS), which shall use the same database engine as the MMIS and shall use the MMIS for display of physical Element information. All physical Elements shall be recorded on the MMIS. The physical Element locations are to be accurate to within one foot in 100 feet. The information displayed geographically shall include pavement condition measurements, maintenance limits, average daily traffic and truck counts, The MMIS shall describe Work performed by roadway segment, type of work, crew/contractor, etc., and any other information relevant to the construction, operation, maintenance and renewal of the Facility. When a physical Element is constructed, installed, maintained, inspected, modified, replaced or removed, Developer shall update the MMIS within three days of completion of such Work. Develop shall record Defects on the MMIS within three days of them coming to the attention of Developer. Developer shall record on the MMIS all other required information within 15 days of completion or occurrence of the relevant activity.

Developer shall fully populate and make operational the MMIS prior to the first Operating Commencement Date and shall keep the MMIS updated and operational for the duration of the Term. Developer shall provide equipment, facilities and training necessary to permit remote, real-time, dedicated high-speed access to the MMIS, via one terminal each, for TxDOT and the Independent Engineer. Developer shall hand over the fully populated MMIS and everything required for its operation to TxDOT, or other entity as directed by TxDOT, upon the Termination Date.

20 BICYCLE AND PEDESTRIAN FACILITIES

20.1 General Requirements

No additional requirements.

20.2 Design Requirements

20.2.1 Bicycle Facilities

Supplement Section 20.2.1 of Book 3 with the following:

Developer shall accommodate existing on-street bicycle facilities and proposed bicycle routes identified in the *NCTCOG Metropolitan Transportation Plan Regional Veloweb Trail System* and shall accommodate bicycle facilities a minimum of 12' wide across IH35W on the north side of the Cottonbelt Fort Worth Connector.

20.2.2 Pedestrian Facilities

Supplement Section 20.2.2 of Book 3 with the following:

The development of the Initial Mandatory Scope shall provide pedestrian facilities that meet or exceed the requirements identified in Section 11 of the Technical Provisions to accommodate the existing and proposed pedestrian facilities including, but not limited to, existing and proposed pedestrian facilities identified in the *NCTCOG Metropolitan Transportation Plan Regional Veloweb Trail System*. Developer's design shall accommodate pedestrian facilities at all crossing streets. Additional requirements are as follows:

- Developer shall provide a pedestrian bridge crossing the Facility at a location in the vicinity of station 947+00 on US287. The east landing of this pedestrian bridge will be located within Harmon Field Park, a 4(f) property, as shown on the Approved NEPA Schematics.

20.2.3 Final Design

No additional requirements.

21 TOLLING

21.1 General Requirements

Replace Section 21.1 of Book 3 with the following:

In the FMP, Developer shall set forth an approach, procedures, and methods for an Open Road Toll (ORT) Electronic Toll Collection System (ETCS).

Developer shall include the ETCS design in the Final Design Documents and shall submit it in accordance with the FMP and FA Documents. Developer shall demonstrate that its ETCS design is capable of accommodating the Ultimate Configuration without substantial teardown.

Developer shall design, develop, test, integrate, deploy, operate, and maintain the ETCS to properly transmit to NTTA a record of the tolls due from all Users in accordance with the toll rate policy and methodology set forth in the FA of which all records are subject to an audit. Developer shall provide data to, and receive data from, NTTA by means of the ETCS so as to enable Developer to maximize collection of all toll payments from Users in a timely, accurate, and efficient manner.

21.2 Design Requirements

Replace Section 21.2 of Book 3 with the following:

Developer shall prepare the ETCS design in accordance with the requirements of this Section 21 of the Technical Provisions and all applicable TxDOT standards. Developer shall specially identify, within the FMP, proposed Deviations from the requirements of this Section 21 of the Technical Provisions and such TxDOT standards.

21.3 ETCS Design and Operational Criteria

21.3.1 ETCS Infrastructure Requirements

21.3.1.1 Mainline Tolling

Replace Section 21.3.1.1 of Book 3 with the following:

Mainline tolling (MT) shall be located such that all User vehicles using the managed toll lanes are assessed a toll. The HOV Registration and Declaration System shall distinguish between single occupancy vehicles (SOV) and high occupancy vehicles (HOV) in the Managed Lanes at each tolling point through the use of the HOV Registration and Declaration System. The Developer system shall identify all declared HOV user transactions. Developer shall provide TxDOT and the tolling services Contractor all HOV transaction information used by Developer in accordance with the Facility Agreement provisions to calculate an HOV discount payment. In addition, Developer shall transmit, or arrange for transmittal of, all valid HOV declaration files. Transmittal shall be through communication

lines provided by TxDOT, to either a TxDOT designated host computer, or in case only one lane is added to the system, to that TxDOT designated gantry, at TxDOT's election. Developer's transmittal of the HOV declaration files shall commence upon receipt of written notice from TxDOT, and shall continue until December 31, 2016, or such earlier time as agreed in writing by TxDOT.

21.3.1.2 Ramp Tolling

No additional requirements.

21.3.1.3 Utility and Personnel Access-way.

No additional requirements.

Incorporate Section 21.3.1.4 as follows:

21.3.1.4 Declaration of High Occupancy Vehicles

Developer shall implement a system that identifies vehicles using the Managed Lanes as High Occupancy Vehicles, at each tolling point and enforcement zone, for applicable toll discounts as specified by the terms of the FA. Until technological advances provide sufficient accuracy and reliability, Developer shall identify high occupant vehicles using the HOVe Registration and Declaration System. Developer shall submit a tolling plan that includes the HOV Registration and Declaration System in the ETCS Plan section of the FMP prior to Service Commencement.

Developer shall coordinate and cooperate with TxDOT and the Law enforcement agencies for the validation of the HOV discount.

21.3.1.4.1 HOV Registration and Declaration System

Developer shall provide, operate and maintain an HOV Registration and Declaration System for the Project that meets the requirements of the FA Documents and applicable Law. The accuracy of the HOV Registration and Declaration System shall be measurable and auditable. Developer shall include the proposed method of audit in the ETCS Plan section of the FMP prior to Service Commencement.

Developer shall be responsible for payment of the HOV discount in the event of any HOV Registration and Declaration System failure including failure to allow a User with a valid transponder to register or declare.

21.3.1.4.2 HOV Registration

The HOV Registration and Declaration System shall enable all users with a valid transponder(s), at no cost to the User, to register as potential HOV Users through the use of website(s), smartphone applications, office walk-in service (at a minimum, during normal business hours), and other mutually agreed methods. Developer's HOV Registration and Declaration System shall accommodate current operating systems and platforms and shall be upgraded to accommodate widely accepted operating

systems and platforms. The HOV Registration and Declaration System shall provide confirmation to the User when the registration process is completed and accepted by the system.

21.3.1.4.3 HOV Declaration

The HOV Registration and Declaration System shall enable all Users with registered and valid transponders to declare and un-declare their HOV status, at no cost to the User, through the use of website(s), smartphone applications, Short Message System (SMS) texting, automated telephone system, and other mutually agreed upon methods. Developer’s HOV Registration and Declaration System shall accommodate current operating systems and platforms and shall be upgraded to accommodate widely accepted operating systems and platforms. The HOV Registration and Declaration System shall also provide notification to the User when their transponder is in a declared or un-declared HOV status.

21.3.2 ETCS Functional Requirements

21.3.2.1 General

Replace Section 21.3.2.1 of Book 3 with the fifth paragraph of the Interface Control Document (ICD) of the NTTA TSA and supplemented with the following:

The ETCS shall be interoperable with all transponders issued by tolling authorities sanctioned by the Texas Department of Transportation. The different types of transponders currently in use in Texas are shown in Table 21-3. Developer shall provide and integrate the transponder readers and antennas that are compatible with the ATA protocol compatible transponders.

Table 21-3: Transponder Models

TransCore Model Number	Power	Internal/External	Mounting Surface	Agency
AT5544	Battery	Either (sealed case)	Non-metallic	HCTRA/TxDOT
AT5545	Battery	Either (sealed case)	Metallic	HCTRA
AT5547	Battery	Internal	Non-metallic	HCTRA
13-5547-600	Battery	Internal	Non-metallic	TxDOT
AT5140	Battery	External (bumper)	Metallic or non-metallic	HCTRA
13-0700-900	Beam	External (bumper)	Metallic or non-metallic	HCTRA
AT5100	Beam	Internal	Non-metallic	NTTA
AT5145	Beam	External (bumper)	Metallic or non-metallic	NTTA/TxDOT
13-5145-01	Battery	External (bumper)	Non-metallic	TxDOT

TransCore Model Number	Power	Internal/External	Mounting Surface	Agency
13-0700-120	Beam	Internal	Non-metallic	HCTRA/NTTA/TxDOT

21.3.2.2 User Classification Sub-system (UCS)

No additional requirements.

21.3.2.3 Video Exception Sub-system (VES)

No additional requirements.

Incorporate Section 21.3.3 as follows

21.3.3 Supplemental Lighting

Any supplemental lighting that Developer chooses to install shall be deployed within the Facility ROW and shall not cause light pollution at Tolling Zones that are in close proximity to residential neighborhoods.

Image capture system lighting design shall avoid blinding or otherwise impairing the vision of motorists. The image capture system lighting design shall not impair the vision of motorists in adjacent lanes and roads as well as traffic traveling in the opposite direction, where applicable.

21.4 Advance Toll Information Signs

Replace Section 21.4 of Book 3 with the following:

Developer shall design, install, operate, and maintain advance toll information signs in accordance with TxDOT standards for the Segment 3A Facility Segment, Segment 3B Facility Segment and Segment 3C Facility Segment.

No later than twelve (12) months before the start of construction of the toll collection system, Developer shall submit to TxDOT for review a layout of the Facility, including for the Segment 3B Facility Segment, identifying the proposed locations and details (including proposed wording) of all advance toll information signs. The advance toll information signs shall be coordinated with other Facility signs. Signs shall be located to provide maximum visibility to Users and situated:

At all RTF locations providing User access to the Facility Managed Lanes

Prior to all entrance ramps to the Facility Managed Lanes

Developer shall consult with TxDOT and shall incorporate the current TxDOT logo or logos that Developer shall integrate into the design and fabrication of guide and trailblazer signs.

21.5 ETCS Performance Requirements

Items 4 through 7 are added to Table 21-1 of Book 3 as follows:

TABLE 21-1 - Tolling Performance Requirements

Ref.	Parameter	Requirement	Measurement Method	Performance Requirement
4	HOV Registration and Declaration System availability	The HOV Registration and Declaration System shall be available to the public to register their transponders or self-declare their HOV status (if their transponder is already registered)	The availability of the HOV Registration and Declaration System shall mean the total number of complete hours the full functionality of the system was available expressed as a percentage of the total number of hours in a given month. This requirement does not apply to scheduled maintenance periods that are in conjunction with maintenance periods for the ETCS	>99.75%
5	Registration success rate	For all Users with a valid transponder that attempt to register their transponders as a potential HOV transponder, the HOV Registration and Declaration System shall successfully allow the Users to register.	The reliability of the HOV Registration and Declaration System shall mean the total number of successful HOV registrations expressed as a percentage of the total number of HOV registration attempts (registration attempt failures caused solely by User error or third party system malfunction are to be excluded from reliability calculations)	>99.90%
6	Speed of confirmation	Acknowledgement (success or failure) of all registration and declaration requests from the BOS shall occur in 15 seconds or less from the completion of the request to the BOS	The number of confirmations that occur within 15 seconds or less expressed as a percentage of all confirmations	>90.00%
7	Declaration and un-declaration success rate	For all Users with a valid and registered transponder that attempt to declare or un-declare their transponders as a potential HOV transponder, the HOV Registration and Declaration System shall successfully allow the	The reliability of the HOV Registration and Declaration System shall mean the total number of successful HOV declarations and un-declarations expressed as a percentage of the total number of HOV declaration and un-declaration attempts (declaration and un-declaration	>99.90%

Ref.	Parameter	Requirement	Measurement Method	Performance Requirement
		declaration or un-declaration of the HOV status	attempt failures caused solely by User error or third party system malfunction are to be excluded from reliability calculations)	

22 OPERATIONS

22.1 General Requirements

Replace Section 22.1 with the following:

The responsibility of Developer for operations Work will begin as noted in Section 8.3 of the FA and continue for the Term. Developer shall institute an effective operations management system to monitor the condition of the Facility and each Element within the Facility and institute an effective maintenance program to comply with the performance measures established in the Maintenance Management Plan as described in Section 19.2 of the Technical Provisions.

22.2 General Operations Obligations

Replace the second paragraph of Section 22.2 of Book 3 with the following:

Developer shall submit the Operations Management Plan (initial OMP) for operations during the DB Phase (for the avoidance of doubt, excluding operations in respect of the Segment 3C Facility Segment) to TxDOT for approval at least 60 Days prior to NTP2. Developer shall submit an update to the OMP (“Updated OMP” and together with the Initial OMP, “OMP”) to take into account operations of the Segment 3C Facility Segment during the DB Phase to TxDOT for approval at least 60 Days prior to NTP2 (3C). Approval of the initial OMP by TxDOT shall be a condition precedent of NTP2; and approval of the Updated OMP shall be a condition precedent of NTP2 (3C). The OMP for the DB Phase shall be developed by Developer to a level of detail appropriate for the operations to be performed during the DB Phase.

The OMP shall be updated by Developer as necessary to include the operations to be performed after Service Commencement for each Facility Segment including addressing any requirements when only part of the Facility has opened for traffic. Each OMP shall be submitted to TxDOT at least 60 Days prior to Service Commencement for each Facility Segment; approval of each OMP by TxDOT shall be a condition precedent of Service Commencement for the applicable Facility Segment.

Between NTP1 or NTP1 (3C), as the case may be, and the applicable Operating Commencement Date for the respective Facility Segment, Developer will coordinate with TxDOT to ensure a smooth transition of operation responsibilities from TxDOT to Developer, which will be effective as noted in Section 8.3 of the FA.

Replace the first bullet of the third paragraph of Section 22.2 of Book 3 with the following:

- Incident Reports: For each Incident, the report shall identify the nature of the Incident, time, date, location, parties involved, and actions taken. Developer shall include details for any traffic control in place at the time of the Incident. For Incidents involving deaths, a report shall be

submitted to TxDOT within 24 hours of the Incident.

22.3 Operation of the Facility

No additional requirements.

22.3.1 Corridor Management

No additional requirements.

22.3.2 Condition Preservation

No additional requirements.

22.3.3 Patrols

No additional requirements.

22.3.4 ITS Operations

No additional requirements.

22.3.5 Traffic Control and Incident Management

Supplement Section 22.3.5 of Book 3 with the following:

In the event of an Incident, Developer shall commence the implementation of safety procedures (including road signing, information for Users, information for Law enforcement agencies) as soon as practicable.

Developer shall not reopen any area of the Facility which has been closed until all appropriate safety and traffic management measures have been completed.

Developer shall develop and document, as a part of the OMP, a comprehensive Incident Management Plan (IMP) to ensure that Developer has considered, planned, addressed, and trained for all likely natural and man-made events or situations that are Incidents or Emergencies, and has established protocols, procedures, and guidelines to mitigate the impacts, and respond to and recover, from all such events. In the IMP, Developer shall clearly distinguish between events or situations considered as either Incidents or Emergencies. Developer shall prepare the IMP and its subcomponents in coordination with and input from the Participating Agencies that are responsible for resolving Emergency events. Developer shall submit the IMP as a part of the Facility's OMP Submittal and shall include in the IMP the following items:

- a) Procedures to identify Incidents and notify Emergency Services providers and establish traffic control for Incident management activities in a timely manner;
- b) Procedures for removal of stalled, broken down, wrecked or otherwise incapacitated vehicles from the travel lane, including coordination with Emergency Services/Law enforcement;

- c) Procedures to provide a maximum response time of 15 minutes by Developer and all measures to be instituted by Developer to clear the Incident and return lane availability within 15 minutes of arriving at the Incident site;
- d) Procedures for cleanup of debris, oil, broken glass, etc. and other such objects foreign to the roadway surface;
- e) Procedures to communicate IMP information to Developer's public information personnel and notify the public of traffic issues related to Incidents in keeping with the requirements of Section 3 of the Technical Provisions; and
- f) Descriptions of contact methods, personnel available, and response times for any Emergency condition requiring attention during off-hours.

Developer shall submit the IMP (for the avoidance of doubt, excluding the Segment 3C Facility Segment) to TxDOT for approval, and such approval shall be a condition precedent of NTP2. Developer shall submit an update of the IMP to account for the Segment 3C Facility Segment to TxDOT for approval, and such approval shall be a condition precedent of NTP2 (3C).

Developer shall cause a trained member of staff to be available 24 hours a Day, seven Days a week to coordinate Developer's response to any Incident or Emergency. Developer shall assist Participating Agencies providing Emergency Services to minimize danger, disruption or delay to the public and pollution of watercourses or groundwater.

Developer shall attend to Incidents with trained personnel, equipped to perform the functions required in Section 22 of the Technical Provisions, in accordance with the obligations stated in the Performance and Measurement Table Baseline (See Table 19-1).

Developer shall provide services for automobile towing of Users' light and heavy vehicles at the Users' expense.

Where an Incident or Emergency has an effect on the operation of the Facility, Developer shall clear obstructions and repair damage to the Facility, in accordance with the IMP, under the supervision of the relevant Participating Agencies if necessary, such that the Facility is returned to normal operating standards and safe conditions as quickly as possible. Where liquid or soluble material spills are involved, Developer shall take all necessary measures to minimize pollution of watercourses or groundwater. Where structural damage to Highway structures is suspected, Developer shall cause a suitably qualified bridge engineer or specialist inspector to be available to evaluate the structure and to advise on temporary repairs and shoring needed to provide safe clearance of the Incident or Emergency. Where such an Incident or Emergency involves a personal injury, Developer shall not remove any vehicle or other item that may assist a potential investigation by a Participating Agency until authorized to do so by such

agency or agencies.

Developer shall appoint a traffic safety officer and one or more deputies to make all arrangements necessary for safety and traffic control including the provision and operation of recovery vehicles for breakdowns. Developer shall cause the traffic safety officer or one of his/her deputies to be on site at all times when safety and traffic management measures are proceeding and to be readily available at all times to deal with matters related to safety and traffic control. Developer shall perform traffic control and incident management of the Managed Lanes and General Purpose Lanes in an identical manner.

22.3.6 Policing

No additional requirements.

**Texas Department of Transportation
Texas Turnpike Authority**

**PROGRAMMATIC TECHNICAL PROVISIONS FOR
COMPREHENSIVE DEVELOPMENT AGREEMENT
BOOK 3**

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1 GENERAL

2 PROJECT MANAGEMENT

Developer shall establish and maintain an organization that effectively manages all Elements of the Work. This Project management effort shall be defined by and follow the Project Management Plan (PMP), which is a collection of several management plan Elements describing discrete Elements of the Work. The Project Management Plan is an umbrella document that describes Developer’s managerial approach, strategy, and quality procedures to design, build, operate, and maintain the Project and achieve all requirements of the CDA Documents.

The structure of the Project Management Plan is outlined in Table 2-1.

Table 2-1: Elements of the Project Management Plan

PMP Chapter	Chapter Title	Section of Book 2 That Define the Chapter Requirements
1	Project Administration	Section 2
2	Quality Management Plan	Section 2
2A	Design Quality Management Plan	Section 2
2B	Construction Quality Management Plan	Section 2
2C	Maintenance Management Plan	Section 2; Section 19
2D	Operations Management Plan	Section 2; Section 22
3	Comprehensive Environmental Protection Plan	Section 4
4	Public Information and Communications Plan	Section 3
5	Safety Plan	Section 2
6	TxDOT – Developer Communications Plan	Section 2
7	Right of Way Acquisition Plan	Section 7
8	Cost Management Plan	Section 2

A listing of documents to be included in the Project Management Plan is contained in Attachment 1, which also indicates when each document must be submitted to TxDOT.

TxDOT and the Independent Engineer will audit and monitor the activities described in the management plans to assess Developer performance. All commitments and requirements contained in the PMP shall be verifiable.

As the Work progresses, certain portions of the Work will commence in the Operating Period, other portions will transition into the Operating Period, and other portions will still be in the DB phase. Unless specified otherwise in the CDA Documents, management plan documents shall clearly differentiate between the management activities during the DB phase and Operating Period, and address the appropriate transition issues when Developer shifts from the DB phase to the Operating Period.

2.1 Administrative Requirements

2.1.1 *Project Schedule*

2.1.1.1 General Requirements

The Project Schedule shall define the timeframe for completion of the Project and achievement of milestones, and be used to monitor progress and denote changes that occur during design and construction.

2.1.1.2 Required Submittals

2.1.1.2.1 Baseline Schedule

Developer shall use the preliminary schedule submitted with the Proposal as a foundation to prepare a Project Baseline Schedule and shall submit a draft of the Project Baseline Schedule to TxDOT for review and approval. Approval of the Project Baseline Schedule shall be a condition of NTP2. Developer shall submit a single hardcopy of the Project Baseline Schedule on full-size (24" x 36") color plot sheets, along with an electronic version of the schedule in its native format.

The Project Baseline Schedule shall include a separate narrative report which describes, in general fashion, Developer's proposed methods of operation for designing and constructing the major portions of the Work required by the CDA Documents. The schedule narrative shall describe the general sequence of design and construction, the proposed Critical Path of the Project, and all Milestone Schedule Deadlines.

The Project Baseline Schedule shall include all major Work activities required under the CDA Documents, in sufficient detail to monitor and evaluate design and construction progress, from commencement of the Work to Final Acceptance of the Work. The Project Baseline Schedule shall also include activities for property acquisition, Utility Adjustments, permit acquisitions, and interfaces with other projects, localities, municipalities and other Governmental Entities. For each major activity, Developer shall indicate the duration (in Days) required to perform the activity and the anticipated beginning and completion date of each activity. In addition, the Project Baseline Schedule shall indicate the sequence of performing each major activity and the logical dependencies and inter-relationships among the activities.

The Project Baseline Schedule shall include a listing of all submittals as called out in the CDA Documents. Submittal activity durations shall include specific durations for TxDOT review and/or approval of Developer's submittals as called out elsewhere in the Agreement and these Technical Provisions.

With the exception of activities relating to Environmental Approvals by Governmental Entities, each activity depicting Developer's operations shall have duration of not more than 20 Days, and not less than one Day, except as otherwise approved by TxDOT. All activities shown in the schedule, with the exception of the first and last activities, shall have a minimum of one predecessor and a minimum of one successor activity.

Float shall not be considered as time for the exclusive use of or benefit of either TxDOT or Developer but shall be considered as a jointly owned, expiring resource available to the Project and shall not be used to the financial detriment of either party. Any method utilized to sequester Float calculations will be prohibited without prior approval of TxDOT. Any schedule, including the Project Baseline Schedule and all updates thereto, showing an early completion date shall show the time between the scheduled completion date and the applicable Milestone Schedule Deadline as "Project Float."

2.1.1.2.2 Project Status Schedule Updates

Developer shall update, on at least a monthly basis, the approved Project Baseline Schedule to reflect the current status of the Project, including approved Change Orders.

Each Project Status Schedule Update shall accurately reflect all activities completed as of the effective date of the updated Project Baseline Schedule. Each Project Status Schedule Update shall indicate the overall completion percentage of the Project.

Developer shall submit a single hard copy of the Project Status Schedule Update in a single copy in full-size color plot sheets, along with an electronic version of the schedule in its native format.

No changes in activity durations, calendar assignments, logic ties, or constraints will be allowed in the Project Status Schedule Update without the written approval of TxDOT.

The Project Status Schedule Update shall include a schedule narrative report which describes the status of the Project in detail.

2.1.1.2.3 Renewal Work Schedule

Before Service Commencement can occur, Developer shall expand and complete the preliminary Renewal Work Schedule submitted with the Proposal and submit the completed Renewal Work Schedule to TxDOT for review. The Renewal Work Schedule shall be sufficiently detailed to indicate the timing of periodic maintenance activities, rehabilitation activities and other Renewal Work, planned Capacity Improvements, and planned Upgrades, and shall be consistent with the requirements contained in Sections 19 (Maintenance) and 22 (Operations).

2.1.2 *Document Management*

Developer shall establish and maintain an electronic document control system to store, catalog, and retrieve all Project-related documents in a format compatible with Texas Reference Marker System. Unless otherwise directed by TxDOT, record retention shall comply with the requirements of the Texas State Records Retention Schedule, and shall be provided to TxDOT at the time of the expiration or earlier termination of the Agreement.

2.2 *Quality Management Plan*

Developer shall submit a comprehensive Quality Management Plan to TxDOT for approval that is consistent with and expands upon the preliminary Quality Management Plan submitted with the Proposal. The Quality Management Plan shall comply with ISO 9001:2000, or most current version as updated by the International Standards Organization. Developer may elect to obtain formal ISO 9001 certification, but will not be required to do so.

2.2.1 *General Requirements*

Developer shall develop, implement, and maintain the Quality Management Plan for the Term. The Quality Management Plan shall describe the system, policies, and procedures that ensure the Work meets the requirements of the CDA Documents and provides documented evidence of same..

The complete Quality Management Plan shall incorporate the following features:

- Developer shall make all quality records immediately available to TxDOT and the Independent Engineer for review. Developer shall provide TxDOT or the Independent Engineer with a copy of any and/or all quality records when requested.
- The Quality Management Plan shall encompass all Work performed by Developer and Contractors of all tiers.
- Developer shall submit to the Independent Engineer and TxDOT the results of all internal audits within seven Days of their completion.
- Developer shall promptly submit to the Independent Engineer and TxDOT non-conformance reports both upon issuance and resolution.

The Quality Management Plan shall contain detailed procedures for Developer's quality control and quality assurance activities. Developer's quality process shall incorporate planned and systematic verifications and audits undertaken by an independent party. Developer shall conduct all quality control,

quality assurance, performance verification, and design overlay and coordination among design disciplines, all in accordance with the Quality Management Plan and the requirements of the CDA Documents.

Inspections, reviews, and testing shall only be performed by personnel with appropriate training and qualifications, using appropriate equipment that is accurately calibrated and maintained in good operating condition at an AMRL (AASHTO R18, “Establishing and Implementing a Quality System for Construction Materials Testing Laboratories”) accredited facility, or at a facility with comparable certification (e.g., ISO 17025, “General Requirements for the Competence of Testing and Calibration Laboratories”).

2.2.2 Quality Terminology

Quality terminology, unless defined or modified elsewhere in the CDA Documents, shall have the meaning defined in ISO 9001. Terms used in ISO 9001 shall have the meanings defined below:

- Organization: Developer’s organization, including any Affiliates and Contractors.
- Customers: the Users of the roadways, TxDOT, Customer Groups, and key stakeholders that have an adjacent property interest or connecting roadway.
- Product: the Work.

2.2.3 Quality Management Organization

Developer shall regularly maintain the Quality Management Plan to contain current versions of the following information:

- The organizational chart that identifies all quality management personnel, their roles, authorities and line reporting relationships.
- Description of the roles and responsibilities of all quality management personnel and those who have the authority to stop Work.
- Identification of testing agencies, including information on each agency’s capability to provide the specific services required for the Work, certifications held, equipment and location of laboratories.
- Resumes for all quality management personnel.

2.2.4 Quality Policy

The Quality Management Plan shall contain a complete description of the quality policies and objectives that Developer will implement throughout its organization. The policy shall demonstrate Developer senior management’s commitment to implement and continually improve the quality management system for the Work.

2.2.5 Inspection and Testing

The Quality Management Plan shall contain detailed descriptions of the inspection and test plans, including the timing and frequency of testing, that Developer will use to meet quality control and quality assurance requirements of the Work

Developer shall revise its Quality Management Plan when its own quality management organization detects a systemic or fundamental non-conformance in the work performed or in the manner the Work is inspected or tested, or when either the Independent Engineer or TxDOT advises Developer of such a problem.

2.2.6 Responsibility and Authority of Developer Staff

Personnel assigned to perform inspection, testing, or monitoring of characteristics for acceptance shall not be those personnel performing or directly supervising the Work being accepted.

Developer's Quality Manager and quality assurance staff shall have no responsibilities in the production of the Work. Quality control staff shall only have responsibilities in the production of the Work and shall remain independent of the quality assurance staff.

The Quality Manager shall prepare a monthly report of the quality inspections and tests performed, results of such inspections and tests, and occurrences and resolution of non-conformance discoveries. Developer shall submit the monthly reports to the Independent Engineer and TxDOT for review.

Developer's Quality Manager, quality assurance manager, and quality control manager(s) shall have the authority to stop Work for quality-related issues.

2.2.7 Design Quality Management Plan

Developer's Final Design shall not deviate from but shall expand upon the preliminary design submitted with Developer's Proposal.

2.2.7.1 Design Submittals

Not later than two Business Days after Developer completes design of any particular Released for Construction Document, and Developer has reviewed and checked the design in accordance with the Quality Management Plan, and Developer's Registered Professional Engineer has signed and sealed the document, Developer shall submit the signed and sealed document to TxDOT. Developer's Released for Construction Document shall comply with the requirements of the CDA Documents, and shall be detailed, complete, constructible, and shall allow verification of the design criteria and compliance with CDA Documents.

2.2.7.2 Record Drawings and Documentation

Within 90 Days of Service Commencement of all or part of the Project, Developer shall submit to TxDOT a complete set of Record Drawings for the portion of the Project actually opened to traffic. The Record Drawings and Documentation shall be an organized, complete record of Plans and supporting calculations and details that accurately represent what Developer constructed.

Developer shall ensure that the Record Drawings reflect the actual condition of the constructed Work.

2.2.8 Construction Quality Management Plan

Developer shall construct the Work in accordance with the Released for Construction Documents, following a reasonable timeframe for TxDOT review and comment, together with the relevant requirements and specifications of the CDA Documents.

2.2.9 Operations Management Plan

Section 22 (Operations) includes requirements for operations management.

2.2.10 Maintenance Management Plan

Section 19 (Maintenance) includes requirements for maintenance management.

2.3 Comprehensive Environmental Protection Plan

Section 4 (Environmental) includes requirements for environmental management.

2.4 Public Information and Communications Plan

Section 3 (Public Information and Communications) includes requirements for public information and communications.

2.5 Safety Plan

Developer shall be responsible for the safety of its personnel and of the general public affected by the Project.

Developer shall submit to TxDOT for approval a comprehensive safety plan (“Safety Plan”) that is consistent with and expands upon the preliminary safety plan submitted with the Proposal. The Safety Plan shall fully describe Developer’s policies, plans, training programs, Work Site controls, and Incident response plans to ensure the health and safety of personnel involved in the Project and the general public affected by the Project during the Term of the Agreement.

Developer’s Safety Plan shall address procedures for immediately notifying TxDOT of all Incidents arising out of or in connection with the performance of the Work, whether on or adjacent to the Project.

2.6 TxDOT-Developer Communications Plan

Developer shall submit to TxDOT for approval a TxDOT–Developer Communications Plan that is consistent with and expands upon the preliminary communications plan submitted with the Proposal. Developer shall maintain and update the Communications Plan as the Design-Build phase and Operating Period progress.

The Communications Plan shall describe the procedures for communication of Project information between Developer’s organization and TxDOT.

The Communications Plan shall describe how Developer’s organization will respond to unexpected requests for information, communicate changes or revisions to necessary Developer personnel, and notify affected stakeholders before and after changes are made to the CDA Documents.

2.7 Right of Way Acquisition Plan

Section 7 (Right of Way) includes requirements for right of way acquisition management.

The ROW Acquisition Survey Document Package shall be reviewed by an independent Registered Professional Land Surveyor (RPLS) for consistency and compliance with all applicable laws, standards, and requirements. The boundary location and the survey methods remain the responsibility of Developer, and are not part of this review process. The reviewing surveyor shall review the survey document package and return his comments to Developer in a timely manner. Developer shall revise and correct the documents in accordance with the reviewing surveyor’s comments in a timely manner. TxDOT will not accept the ROW Acquisition Survey Document Package as complete until the reviewing surveyor has signed and sealed the compliance certificate (see Reference Information Documents).

2.8 Cost Management Plan

For publicly funded or subsidized projects, Developer shall develop, implement, and maintain a Cost Management Plan. Requirements for the Cost Management Plan are stated in Book 2.

3 PUBLIC INFORMATION AND COMMUNICATIONS

3.1 General Requirements

It is vital to the success of the Project that TxDOT and Developer gain and maintain public support. The public will better support TxDOT and Developer if they are kept abreast of Project information in a timely manner, are notified in advance of potential impacts, have an opportunity to identify issues and recommend solutions, receive timely and appropriate feedback from Developer, and perceive a high-quality, well executed communications plan for keeping them informed, engaged, and educated.

This Section 3 describes the requirements with which Developer shall comply during the Term of the Agreement regarding the provision of information and communication with the Customer Groups.

3.2 Administrative Requirements

3.2.1 *Public Information and Communications Plan*

At least 60 days prior to NTP2, Developer shall submit, for TxDOT approval, a comprehensive Public Information and Communications Plan (PICP), based upon the preliminary communications plan submitted with Developer's Proposal, which informs, educates, and engages the Customer Groups throughout every stage of the Project. Submittal shall be in both hardcopy form and electronic format compatible with TxDOT software. TxDOT approval of the PICP shall be a condition of issuing NTP2. In preparing this plan, Developer shall identify the Customer Groups and develop specific plans to respond to their concerns and needs in all respects regarding the Project. After incorporation of comments from TxDOT on the plan, Developer shall implement the various activities and initiatives contained therein. Developer shall continually maintain the plan to ensure delivery of high-quality, well executed communications throughout the Term of the Agreement.

The PICP shall be flexible to capture the full magnitude of yet-to-be-determined impacts from Project activities such as design, construction, maintenance, and operations, and the public's reaction to these and other impacts. The PICP shall also be resilient to successfully implement the outlined strategies, given the ever-changing desire for depth, breadth, and frequency of information by a variety of important Customer Groups such as the media, elected officials, and the general public.

The PICP shall include a general timeline listing public information activities for the Project over the entire Term of the Agreement.

TxDOT and the Independent Engineer may audit Developer's performance of the activities set forth in the PICP. Developer shall make appropriate changes to the PICP as required to meet the findings of any audit or review and to suit the changing goals and needs of the Project. Developer shall cooperate with TxDOT to amend the PICP as required to suit circumstances as yet unknown, including public reaction to the impacts from the Work and the depth, breadth and frequency of information necessitated by Customer Groups. Developer shall document the efforts and results of the PICP in measurable terms to clearly indicate compliance.

Developer shall provide sufficient qualified staffing to effectively implement the PICP.

In developing the PICP, Developer shall make appropriate provisions to achieve the following:

Public liaison

- Gain and maintain public support, building on existing community partnerships and communication networks.
- Provide the public with opportunities for input.
- Demonstrate to the public that the Project will be developed pursuant to a well-executed program.

- Notify the public in advance of key Project ROW acquisition, construction, operations, and maintenance activities and communicate the potential impacts of these activities.
- Develop, disseminate and display timely, high-quality, innovative, user-friendly, accurate and appropriate community information including exhibits showing slope grading, drainage, bridge structures, retaining walls, sound walls, and Project ROW acquisition.
- Develop and manage a public relations campaign and communication strategy to convey key messages, branding and pertinent information about the Project.

Customer Groups

- Develop a forum to coordinate on-going dialogue among Customer Groups, TxDOT, and Developer.
- Prepare and distribute Project-related materials in a user friendly format to inform Customer Groups through appropriate means such as: meetings, interviews, media kits, news releases, telephone correspondence, newsletters, brochures, e-mail, hotlines, Highway Conditions Reports (HCRs), dynamic message boards, Web alerts, public opinion polls/surveys, videos, display booths, presentations, public access information kiosks, and special events.
- Organize and manage meetings with key elected officials, the general public, representatives of civic organizations, businesses, and special interest groups along the Project corridor (individually or in groups) for the purpose of building rapport with affected stakeholders.

Media

- Build on existing TxDOT media resources and/or create and develop advertising messages, including graphics, logos, and slogans.
- Place Project-related messages in the appropriate media.
- Develop and distribute public service announcements, paid advertising, and news reports.
- Manage media relations with key transportation and business reporters and prepare and distribute news releases and media kits.

Environmental

The PICP shall detail the communication hierarchy for information distribution related to the compliance with the Comprehensive Environmental Protection Plan, as described in Section 4 (Environmental). The PICP shall include names and contact information, including emergency contact information, and the preferred methods of routine, and emergency communication distribution.

3.2.2 Public Information Coordinator

Developer shall provide a Public Information Coordinator to lead Developer's responsibility for public involvement activities on a day-to-day basis throughout the Term of the Agreement. The Public Information Coordinator shall have a minimum of four years of relevant experience on projects of similar type and scope, and the ability to competently perform the following:

- Provide the primary point of contact between Developer and the public and act as clearinghouse for the receipt and response to written or verbal complaints regarding the Project.
- Lead the production, implementation, audit, quality control/quality assurance and update of the PICP.
- Coordinate and supervise day-to-day activities of Developer's personnel in performing the activities described in the PICP.
- Facilitate communication among Developer, TxDOT personnel (including TxDOT's Public Information Officers), and Customer Groups.
- Interact with affected Customer Groups and represent the interests of the Project at associated public meetings and other formal and informal occasions.

- Develop a “first-hand feel” for public concerns and reactions regarding the Project and public information program and incorporate that knowledge into improving the PICP.
- Liaise with the person assigned to coordinate the initial response to any Incident or Emergency as set forth in Section 22 (Operations) and any Governmental Entity that may have jurisdiction in the Emergency.

3.2.3 Public Information Office

Developer shall maintain a public information office for the Term of the Agreement. The hours of operation for this office shall be as outlined in Book 2, Section 3.2.3. This office shall serve as the primary business location for the Public Information Coordinator and shall be conveniently located to the Project Site. The public information office shall facilitate the exchange of information between Developer and the public and provide a centralized location for residents and other Customer Groups to obtain information on the Project, including Project maps and Plans, alternative routes, lane closures, construction updates, community impacts, and commute options.

In addition to the services listed above, Developer shall provide a 24-hour telephone hotline, manned during normal business hours of the public information office, with a recorded message describing Emergency procedures after hours. (contemplate changing the hours of operation after DB)

3.2.4 Customer Groups

The Public Information Coordinator shall actively engage, inform, and seek appropriate support from Customer Groups for the Project throughout every stage of the Project. Customer Groups shall include the following:

- Media
- Governmental Entities, including regulatory and law enforcement agencies
- General public residing or working within the general vicinity of the Project, or traveling within or across the limits of the Project
- Business owners within or adjacent to the Project corridor
- Utilities, railroads, transportation authorities and providers (such as local airports, transit operators, toll authorities, and other highway concessionaires) affected by the Project

3.2.5 Public Meetings

Developer shall organize and manage meetings with the Customer Groups during design and construction activities.

During such meetings, Developer shall inform the public of the Project's progress and discuss key issues as they emerge. Developer shall provide timely and useful information regarding subjects of interest to the public, including:

- Design and construction issues affecting adjacent residential areas, frontage roads, local streets, and utilities, including such issues as Project ROW definition, Project ROW acquisition process, grading, drainage, and noise and retaining walls
- Street and roadway detour design and implementation
- Scheduling and duration of Work, including hours of construction
- Haul routes
- Methods to minimize noise and dust
- Environmental mitigation measures

Developer shall notify TxDOT a minimum of 48 hours in advance of any meetings with the public. TxDOT reserves the right to attend any such meetings. When requested by TxDOT, Developer shall participate in any meetings with the public called and conducted by TxDOT by providing necessary support. When TxDOT decides to conduct such meetings, Developer shall share, in a readily

manipulative form, all necessary information regarding potential Customer Groups at TxDOT's request and at no cost to TxDOT.

3.2.6 Meeting Minutes

For all meetings with the public which Developer conducts or directly participates in, Developer shall prepare meeting minutes within five Business Days after the conclusion of such meetings. At a minimum, Developer shall include the following items in the meeting minutes:

- A complete list of attendees (including their affiliations, telephone numbers, and e-mail addresses)
- Documentation of the issues discussed and any associated solutions
- Description of remaining open issues and action items (including the person(s) responsible for follow-up and target date for resolution)

Developer shall submit draft versions of all meeting minutes to TxDOT for review before distributing final versions to the meeting attendees and appropriate Customer Groups.

3.2.7 Emergency Event Communications

For all Emergency events, such as vehicle collisions, ice/snow conditions, and Hazardous Material spills, the Public Information Coordinator shall take timely and appropriate action to inform TxDOT and appropriate Customer Groups of all pertinent details. The Public Information Coordinator shall provide these details through the use of appropriate tools to ensure effective communication. These tools include: dynamic message signs (DMS), TxDOT's Highway Conditions Report (HCR), email/Web alerts, telephone notification, facsimiles, and media releases/interviews, as appropriate. The Public Information Coordinator shall continue to provide updated information, as available and on a timely basis, until the Emergency no longer exists.

In the event of an unforeseen Emergency, timely notification shall mean as soon as practicable, but in no event longer than within one hour of the occurrence. If advance warning is available for an Emergency event such as ice/snow, timely notification shall mean as soon as practicable, but in no event longer than within one hour of the time the information was available. In both situations, the Public Information Coordinator shall continue to provide updated information, as available and on a timely basis, until the Emergency no longer exists.

3.2.7.1 Lane Closures

Subject to the lane closure restrictions set forth in Section 18 (Traffic Control) and Section 22 (Operations), Developer shall provide TxDOT and appropriate Customer Groups a minimum of two weeks advance notice for lane closures and/or traffic switches planned to be in effect longer than 24 hours, and a minimum of 24 hours advance notice for lane closures that are planned to be in effect less than 24 hours, using all appropriate tools as needed. The Public Information Coordinator shall input all lane closures (or an event that results in lane closures) into the TxDOT HCR.

3.2.8 Disseminating Public Information

Developer shall prepare and appropriately distribute materials regarding Project-related subjects, using all appropriate methods, including: meetings, news releases, telephone correspondence, newsletters, email, hotlines, HCR, dynamic message signs, Web alerts, maps, displays, renderings, presentations, brochures, and pamphlets.

Developer shall create a public Web site to convey Project-related information, including:

1. Contact information
2. Project maps
3. Frequently asked questions (FAQs)
4. Current Project activities addressing design, construction, maintenance, and operations

5. Timing of street and ramp closures and openings
6. Recommended route alternatives during closures
7. Special events calendar
8. Links to TxDOT HCRs
9. Links to other related sites as deemed appropriate by TxDOT

The Web site shall also contain other general Project-related information that enhances the engagement or education of the general public. Developer shall regularly review and update information on this public Web site throughout the Term of the Agreement to provide current and appropriate information.

All written materials produced for Customer Groups shall follow the TxDOT *Style Guide* and/or other appropriate spelling/writing guidelines.

Developer, working collaboratively with TxDOT, shall assess the need for multi-lingual communications and, where appropriate, furnish Project-related materials in Spanish or other demographic adaptations.

4 ENVIRONMENTAL

4.1 General Requirements

The Developer shall deliver the environmental commitments required by the RFP, CDA Documents, Environmental Laws, Governmental Entities, Governmental Approvals, and all applicable federal and state Laws and regulations. To that end, the Developer shall develop, operate, and maintain a Comprehensive Environmental Protection Program (CEPP) for the Work to ensure environmental compliance with all applicable Environmental Laws and commitments. The Program shall obligate the Developer to protect the Environment and document the measures taken during the performance of the Work to avoid and minimize impacts on the Environment from the design, construction, maintenance, operation, and rehabilitation activities of the Project. The Program shall effectively demonstrate in detail the Developer's knowledge of all applicable project-specific Environmental Approvals, issues, and commitments and applicable Environmental Laws as set forth in Book 2, and shall describe the processes that will be followed during the course of the Work to comply with those Environmental Approvals, issues, and commitments and Laws, as well as the documentation required to validate compliance. All monitoring and reporting activities shall be concise, consistent throughout the Term of the Agreement as applicable to the activities being performed, and in accordance with the requirements set forth in the Environmental Laws. The program shall also effectively describe the quality control and assurance measures that the Developer will implement to verify the compliance of the program with all applicable Environmental Laws.

The program shall establish and implement environmental permits, issues, and commitments consistent with the Environmental Approvals. Additional specific requirements are found in Book 2, Section 4. The program shall establish a goal of zero environmental violations during the performance of all Work activities. However, should violations occur, the program shall set forth detailed processes for rectifying such violations in an appropriate and timely manner.

The Developer's obligation regarding Governmental Approvals and Laws, including Environmental Laws and Environmental Approvals, and the Developer's obligation for environmental compliance is set forth in Book 2, Section 4.1.

The Developer shall cause Work to comply with Environmental Approvals and compliance requirements for any additional actions throughout the Term of the Agreement. The Developer shall monitor and document Work activities so that documents providing evidence for compliance are available to TxDOT for inspection at any time.

4.2 Environmental Approvals

4.2.1 *New Environmental Approvals and Amended TxDOT-Provided Approvals*

TxDOT-Provided Approvals are based on the Project schematic as presented in the Environmental Approvals. Such approvals may require re-evaluation, amendment, or supplement as the Work progresses or in order to accommodate actions not identified in the Environmental Approvals or covered specifically by existing resource agency coordination. Changes to the Project schematic or incorporation of Additional Properties into the Project may require new Environmental Approvals.

The Developer will be responsible for coordination with Governmental Entities necessary to obtain new Environmental Approvals or amendments to the TxDOT-Provided Approvals except where TxDOT has agreements with Governmental Entities to perform such coordination.

The Developer will be responsible for ensuring compliance with the conditions and schedules set forth in amendments to any TxDOT-Provided Approvals or new Environmental Approvals. TxDOT may, in its

discretion, provide assistance in securing new Environmental Approvals or amendments to TxDOT-Provided Approvals.

4.2.2 Responsibilities Regarding Environmental Studies

The Developer, with possible support from TxDOT as indicated in Book 2, shall be responsible for conducting continuing environmental studies based on the Project approved NEPA document and Project schematic.

The Developer, with the possible support from TxDOT as indicated in Book 2, shall be responsible for conducting environmental studies and re-evaluations caused by actions not identified in the Environmental Approvals, actions not covered specifically by existing resource agency coordination, or incorporation of Additional Properties into the Project. The Developer shall be responsible for all coordination of environmental studies with appropriate Governmental Entities, except where TxDOT has agreements with Governmental Entities to perform such coordination.

4.2.3 TxDOT Review and Approval of Developer Submissions

TxDOT reserves the right to review, comment on, require revisions to, and reject for resubmission documentation submitted for environmental compliance or Environmental Approvals. Documentation shall conform to current TxDOT submission standards and the requirements of all applicable Governmental Entities, laws, and regulations. TxDOT will accept documentation meeting current submission standards. TxDOT will return approved documentation to the Developer for submittal to the appropriate Governmental Entity in cases where the Developer performs coordination. TxDOT, acting reasonably, will approve those submissions for which TxDOT signature or other approval is required. Documentation not meeting current submission standards or requirements of Governmental Entities will be returned to the Developer, and shall be revised by the Developer to meet standards or requirements.

4.3 Comprehensive Environmental Protection Program (CEPP)

As part of the PMP, the Developer shall develop and implement a Comprehensive Environmental Protection Program, applicable throughout the Term of the Agreement to establish the approach, requirements and procedures to be employed to protect the environment. All component parts shall reflect in order of priority: impact avoidance, minimization and as last resort mitigation. The CEPP shall satisfy applicable FHWA, TxDOT and resource agency requirements, including those detailed as commitments in any Environmental Approvals.

At a minimum, the CEPP shall include the following component parts:

- Environmental Management System (EMS),
- Environmental Compliance and Mitigation Plan (ECMP),
- Environmental Protection Training Plan (EPTP),
- Hazardous Materials Management Plan (HMMP),
- Communication Plan (CP),
- Construction Monitoring Plan (CMP),
- Recycling Plan (RP).

The dates by which component parts comprising the CEPP are to be submitted for TxDOT approval are set forth in Book 2. Amendments and updates to the CEPP as necessary to address changing conditions and environmental requirements shall be in accordance with the procedures for amendments to the PMP.

4.3.1 Environmental Management System (EMS)

The EMS shall be the overarching system by which the Developer shall cause environmental commitments made during the Environmental Approval and permitting processes, and other

environmental requirements to be carried forward and reflected, as appropriate, in the design and implemented throughout the Work. The Developer shall utilize the EMS to track on-going issues, identify environmental compliances, non-compliances and identify actions required/taken to correct any such non-compliance.

4.3.2 Environmental Compliance and Mitigation Plan (ECMP)

The ECMP shall document and fully detail compliance strategies and procedures to be employed to cause Work performance in accordance with requirements of applicable Environmental Laws and Environmental Approvals. This plan shall establish and/or document schedules, protocols, and methodologies to be used in accomplishing Work, with an emphasis on monitoring, reporting, corrective actions and adaptive management. The plan shall include a Compliance Action Plan (CAP). The CAP shall consist of a decision making matrix which will define the triggers for initiating or re-initiating environmental compliance actions for construction and maintenance activities. For each trigger, the CAP will identify the appropriate type or level of environmental study or other compliance action necessary to ensure the ongoing validity of Project Environmental Approvals and commitments. In addition, the ECMP shall detail any mitigation required by Environmental Approvals and the Developer's approach to satisfying mitigation requirements, including mitigation requirements identified after completion of the ECMP.

The ECMP shall include the following components:

- **Environmental Permits, Issues, and Commitments (EPIC) Sheets**

The Developer shall develop and maintain EPIC construction plan sheets. Applicable permits and environmental commitments shall be identified on EPIC sheets and updated throughout the construction period to identify on-Site conditions.

- **Clean Water Act - Sections 404 and 401: Waters and Wetlands of the United States**

The Developer shall document how they will comply with the terms and conditions for Section 404 permit(s) issued to TxDOT by the USACE (U.S. Army Corps of Engineers) and associated Section 401 State Water Quality Certification(s) as administered by the TCEQ (Texas Commission on Environmental Quality) as well as any additional Section 404 permits and 401 certifications issued to the Developer during the life of the Project. The documentation at a minimum shall include:

- Process for training personnel to recognize Waters of the U.S. that fall under the jurisdiction of the USACE,
- Process for communicating the terms and conditions of all USACE 404 permits and TCEQ 401 certifications,
- Procedures for carrying out any required mitigation,
- Procedures for handling off-right-of-way Project Specific Locations (PSL) as required by all Section 404 permit(s) issued to either TxDOT or the Developer by the USACE.

- **Clean Water Act - Sections 402: Texas Pollutant Discharge Elimination System (TPDES)**

The Developer shall document how they will comply with Section 402 of the CWA. The documentation shall include that the Developer has day-to-day operational control over activities necessary to ensure compliance with the Storm Water Pollution Prevention Plan (SW3P) and has the sole responsibility for any potential non-compliance issue. The documentation shall also include that the Developer is responsible for submitting a Notice of Intent (NOI) to TCEQ. The documentation at a minimum shall include:

- Process for training personnel on the requirements and conditions of the Texas Construction General Permits for Storm Water Discharges from Construction Sites (CGP),

- Procedures for incorporating additional properties outside the original NEPA approved schematic and any off- right-of-way PSL within one linear mile of the project limits to comply with the CGP and the project's SW3P,
 - Procedures for handling non-compliance issues,
 - Escalation procedures for SW3P items.
- **State Listed Species and Unregulated Habitat**

The Developer shall develop document how they will address state listed species and unregulated habitat. The documentation shall be in agreement with all MOU's and MOA TxDOT has with the Texas Parks and Wildlife Department (TPWD) including the requirement for coordination with TPWD to be conducted by TxDOT. The documentation at a minimum shall include:

- Process for communicating any commitments regarding state listed species and unregulated habitat,
 - Procedures for complying with any commitments.
- **Endangered Species Act and Fish and Wildlife Coordination Act**

The Developer shall document how they shall comply with the Endangered Species Act (ESA) and the Fish and Wildlife Coordination Act (FWCA). The documentation shall reflect that coordination with U.S. Fish and Wildlife Service (USFWS) shall be conducted by TxDOT. The documentation at a minimum shall include:

- Process for training personnel on the requirements of the ESA and FWCA,
 - Process for communicating any commitments regarding ESA and FWCA,
 - Procedures for complying with any commitments including mitigation.
- **Traffic Noise**

The Developer shall document how they will address traffic noise mitigation. The documentation at a minimum shall include:

- Process for carrying out noise mitigation measures as identified and discussed in the approved NEPA document and schematic,
- Process for carrying out noise mitigation measures determined throughout the life of the project,
- Process to handle changes that may occur to proposed permanent noise mitigation in the approved NEPA document and schematic.

To fulfill the commitments of the previously mentioned TxDOT-Provided approvals the Developer shall be responsible for implementing all noise mitigation measures to minimize construction and long-term impacts of the Work as prescribed in TxDOT-Provided approvals and subsequent TxDOT-Provided approvals secured by the Developer. The Developer acknowledges that TxDOT-Provided approvals and proposed permanent noise mitigation are based on the schematic design and Schematic ROW; consequently the proposed permanent noise mitigation may require amending by the Developer as the Work progresses.

• **Water Well Impacts and Requirements**

The Developer shall document how they will address wells (such as municipal, domestic, irrigation, oil and gas, or monitoring and observations wells) encountered during the life of the project. The

documentation shall include that the Developer is responsible for plugging and abandoning all wells in accordance with Item 103, Disposal of Wells, from TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, as well as the developer is responsible for any required remediation efforts. The documentation at a minimum shall include:

- Process for training personnel on recognition of wells,
- Procedures for handling wells,
- Procedures for handling contamination of a well that results from the Developer's work. Procedures shall include a requirement to notify TxDOT and with TxDOT's concurrence notify appropriate regulatory agency within 24 hours of the discovery.
- **Cultural Resource Studies**

The Developer shall be responsible for ensuring compliance with cultural resource Laws on the Project through the Term of the Agreement. TxDOT shall perform consultation for the Project according to current procedures for implementing Section 106 of the National Historic Preservation Act, and the Antiquities Code of Texas.

Subsequent to issuance of NTP1, the Developer shall be responsible for performing any necessary cultural resource surveys, evaluations, testing, and mitigation in those areas outside the footprint of the Project ROW shown on the schematics as defined in the original NEPA Approval and within the area of potential effects. The Developer shall coordinate all necessary Antiquities Permits through TxDOT. Antiquities Permits shall be obtained from the Texas Historical Commission (THC) for archeological surveys, testing, monitoring, and data recovery.

The Developer shall document efforts to avoid impacts to cultural resources. that are listed on or eligible for inclusion in the National Register of Historic Places (NRHP), or that are designated as State Archeological Landmarks.

If evidence of a possible historic property is encountered during the course of the Work, the Developer shall immediately cease Work in the immediate area and contact TxDOT to initiate post-review discovery procedures under the provisions of the PA among TxDOT, SHPO, FHWA, and ACHP as well as the MOU between TxDOT and the THC. The Developer shall undertake appropriate measures to protect the site from further intrusion to the extent feasible until an appropriate evaluation of the site can be made by a qualified representative. Work shall not be resumed in the area until the Developer receives notification and approval from TxDOT.

- **Public Involvement**

The Developer shall document how they will comply with all public involvement requirements, including public involvement requirements specifically related to cultural resources. The documentation shall comply with all applicable requirements including, but not limited to, 43 TAC §2.4, Section 106 of the National Historic Preservation Act (36 CFR 800), Chapter 26 of the Texas Parks and Wildlife Code, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. The documentation shall include that the developer is responsible for conducting all public involvement requirements for the life of the project except where TxDOT has agreements with Governmental Entities to perform public involvement requirements. The documentation at a minimum shall include:

- Process for handling public involvements requirements,
- Procedures for documenting public involvement.

4.3.3 *Environmental Protection Training Plan (EPTP)*

The Developer shall develop and implement an Environmental Protection Training Program that shall meet the minimum requirements set forth herein. The EPTP shall include methods and procedures documented in the ECMP to:

- Educate every worker to:
 - a. Recognize the overall importance of environmental issues to constructing, operating and maintaining a successful Project.
 - b. Appreciate the various environmental sensitivities of the Project.
- Train every worker to:
 - a. Recognize environmentally sensitive resources that may be encountered during the Work.
 - b. Avoid or take appropriate action to minimize environmental impacts from the Work.
 - c. Know the required actions, practices, and procedures regarding regulated resources.
- Foster the Developer's management and supervisory personnel's attitude of commitment to the Project's environmental quality.
- Convey to all workers, the Developer's management commitment to the Project's environmental quality.
- Convey to all workers, TxDOT's and the Developer's commitment to zero tolerance for violations.

4.3.3.1 **EPTP Scope and Content**

The goal of the EPTP is to educate Project personnel about the following:

- Overall importance of environmental protection to the Project
- Compliance responsibility and Governmental Entity authority including background and environmental issues regulatory overview.
- Overview of the Developer's environmental commitments and responsibilities at the Project level.
- Worker responsibilities.
- Wetlands identification.
- Environmental Approvals terms and conditions including an overview of the provisions of the ESA, Migratory Bird Treaty Act, and Stormwater Pollution Prevention Program (SW3P).
- BMPs for environmental compliance, including pollution prevention, erosion, sedimentation, and dust control measures to maintain water and air quality.
- Required mitigation measures.
- Procedures and precautions in the event of spills of or discovery of Hazardous Materials or unknown chemicals or contamination.
- Procedures and precautions in the event human skeletal remains or other archeological or paleontological resources are discovered.
- Procedures regarding the relocation of historical markers (i.e. Texas Historic Commission Subject Markers, DAR OSR Markers, Texas Centennial Markers, Texas Highway Department Markers, and local/county markers).
- Groundwater protection requirements.
- CWA regulations and surface water protection requirements.
- Overview of noise and residential impact reduction procedures.
- Air quality requirements.
- Penalties and/or fines for violations of and noncompliance with Environmental Approvals and Environmental Laws, including termination of employment.

4.3.4 EPTP Participation

The Developer shall require all employees to participate in the EPTP and shall keep accurate records documenting attendance, as well as materials presented.

4.3.4.1 EPTP Schedule

The Developer shall include activities for implementation of the EPTP in the Project Schedule. The length of training sessions and their frequency shall be sufficient to achieve the goals set forth above. Periodic training sessions at key times (e.g., prior to construction or major maintenance in sensitive areas or construction timing restrictions to protect threatened and/or endangered species) shall be used to update workers on specific restrictions, conditions, concerns, and/or requirements.

4.3.5 Hazardous Materials Management Plan (HMMP)

The Developer shall prepare an HMMP for the safe handling, storage, treatment and/or disposal of Hazardous Materials, whether encountered at or brought onto the Project Site by the Developer, encountered or brought onto the Project site by a third party, or otherwise, during the Term of the Agreement. The Developer shall submit the final Hazardous Materials Management Plan to TxDOT for review and approval in its good faith discretion within 60 days of NTP1; approval of the Plan by TxDOT shall be a condition of commencement of Construction Work.

The Hazardous Materials Management Plan shall include procedures compliant with all applicable Environmental Laws and include, at a minimum:

- For all chemicals to be used on the Project, the Developer shall keep and update Material Safety Data Sheets (MSDS), per OSHA requirements, for the Term of the Agreement.
- Designated individuals responsible for implementation of the plan,
- Procedures for identifying and documenting potential contaminated sites which might impact Project development,
- Procedures for mitigation of known contaminated sites anticipated to impact construction,
- Procedures for mitigation of unanticipated contaminated sites encountered during construction,
- Procedures for mitigation of contamination during the operation and maintenance of the Project,
- Procedures for developing a detailed Spill Response Plan for the Term of the Project,
- Process for training personnel for responding to and mitigating Incidents involving contamination or waste
- Provisions for appropriate storage and disposal of all waste encountered or disposed of on the Project for the Term.
- Provision for a Hazardous Materials training module as an Element of the EPTP component of the CEPP.
- Procedures for preparing an Investigative Work Plan (IWP) and Site Investigative Report (SIR) in the event that Hazardous Materials are discovered during construction; operations or maintenance activities.
- Identification and contact information for designated responsible individuals.

The HMMP shall include provisions for making all on-Site workers aware of the potential Hazardous Materials to which they may be exposed, limiting Contractors and other Site workers' exposure to Hazardous Materials and providing all necessary personal protection equipment to protect workers from exposure. The HMMP shall require the Developer to provide any non-Developer personnel who visit the Project with the appropriate personal protection equipment.

The HMMP shall require that all personnel of Developer-Related Entities handling Hazardous Materials be trained and certified at least to the minimum requirements established under the current guidelines of OSHA 1910.120 (HAZWOPER Training).

Further, the HMMP shall include procedures for ensuring that all applicable certifications, licenses, authorizations and Governmental Approvals for the Developer personnel handling Hazardous Materials are current and valid through the duration of the Work.

4.3.6 Communication Plan (CP)

The developer shall develop a CP which describes in detail the communication hierarchy for information distribution related to the compliance with the CEPP. The CP will include names and contact information, including emergency contact information, and the preferred methods of routine, and emergency communication distribution.

4.3.7 Construction Monitoring Plan (CMP)

The CMP shall identify times, locations, and other conditions where monitoring of construction activities are to be performed to maintain and cause compliance with Environmental Laws, Environmental Approvals, and the CDA Documents. The CMP shall establish and/or document schedules, protocols and methodologies to be used for monitoring Work with an emphasis on timely reporting, corrective actions and adaptive management. The CMP shall establish reporting procedures, identify reporting requirements and establish controls for report distribution and records retention. All Environmental Monitoring Reports shall be made available for review by TxDOT at TxDOT's request. Should any non-compliance or violation be observed that represents an imminent danger to human health or the environment, the CMP shall include procedures to cause immediate notification of TxDOT.

4.3.8 Recycling Plan

The recycling plan shall document and fully detail the Developer's commitment to recycling, waste minimization and use of "green products" during all aspects of Work. The recycling plan shall document the Developer's recycling initiatives as well as methods and procedures for maximizing the use of recycled materials in all aspects of the Work. If recyclable materials shall be used in lieu of TxDOT approved construction and maintenance materials, the Developer shall follow the TxDOT specification DMS 11000.

4.4 Environmental Personnel

The Developer, acting through the Environmental Compliance Manager (ECM), shall designate an Environmental Team (ET), as detailed in this section, to prevent, minimize, and/or correct any violation of or noncompliance with Environmental Approvals. The ET shall include Environmental Training Staff, Environmental Compliance Inspectors (ECIs), Archeologist, Architectural Historian, Historian, Historical Architect, Natural Resource Biologist, Water Quality Specialist, and Hazardous Materials Manager. All of the ET shall be deemed other principal personnel.

In the CEPP, the Developer shall set forth an approach, procedures and methods for:

- Staffing and availability of ECM and all ET personnel.
- ET staff response times during the Work.

4.4.1 Environmental Compliance Manager (ECM)

The Developer shall designate a full-time ECM for the Work. The ECM shall report and coordinate all issues directly with TxDOT and the Developer's Project Manager. In the event the ECM, in consultation with the Developer's Project Manager and TxDOT, is unable to reach satisfactory resolution of environmental issues, the ECM shall provide written notification to the Developer and TxDOT outlining the concerns, actions taken in attempt to correct the concerns, and provide a recommendation as to the suggested course of action.

The ECM shall direct the work of the ET and shall monitor, document, and report environmental compliance for the Work. The ECM shall report immediately to TxDOT and the Developer any violation

or non-compliance and shall include with any such report, the appropriate recommendations for corrective action including stoppage of Work.

The ECM shall coordinate with TxDOT, the Developer, and appropriate Governmental Entities. The ECM shall submit all necessary environmental documentation and monitoring reports to the appropriate Governmental Entities and when applicable, through TxDOT, to the extent necessary to maintain compliance with applicable Environmental Approvals.

4.4.2 Environmental Training Staff

Under the direction of the ECM, the environmental training staff shall develop, schedule and conduct environmental awareness and environmental compliance training for the Developer's personnel. All training shall be in accordance with the requirements set forth in Section 4.2.3.

4.4.3 Environmental Compliance Inspectors (ECI)

The ECIs shall conduct on-Site environmental monitoring, prepare documentation, and report to the ECM daily all violations, compliance, and noncompliance with Environmental Approvals.

The ECI shall report immediately to the ECM any violation or non-compliance and shall include with any such reports, the appropriate recommendations for corrective action, including stoppage of Work.

4.4.4 Cultural Resource Management Personnel

The ECM shall designate an Archeologist, Architectural Historian, Historian, and/or Historical Architect as specified in Book 2, Section 4 to provide expertise in monitoring impacts to cultural resources during the course of the Work.

Qualifications: Cultural Resource Management Personnel shall meet qualifications as specified in Book 2, Section 4.

4.4.5 Natural Resource Biologist

The ECM shall designate a Natural Resource Biologist as specified in Book 2, Section 4 to provide expertise in monitoring impacts on wildlife and the natural environment during the course of the Work.

Qualifications: The Natural Resource Biologist shall meet qualifications as specified in Book 2, Section 4.

4.4.6 Water Quality Specialist

The ECM shall designate a Water Quality Specialist to provide expertise in permitting delineation, stormwater pollution prevention, and the protection of jurisdictional waters during the course of the Work.

Qualifications: The Water Quality Specialist shall meet qualifications as specified in Book 2, Section 4.

4.4.7 Hazardous Materials Manager

The ECM shall designate a Hazardous Materials Manager to provide expertise in the safe handling of Hazardous Materials required to perform the Work and those that may be discovered/impacted during the duration of the Agreement. The Hazardous Materials Manager shall conduct appropriate activities such as the following:

- Schedule and/or conduct training for the Developer's employees.
- Verify all employee certifications prior to and required for any handling of Hazardous Materials.
- Maintain records of all incidents involving Hazardous Materials and notify the ECM, TxDOT and appropriate authorities in writing of any such incidents.

Qualifications: The Hazardous Materials Manager shall be a qualified professional with 40-hour HAZWOPER certification and at least five years experience in similar projects in the following areas:

- Experienced in developing IWPs, SIRs, and remedial action plans or equivalent reports necessary and acceptable to the TCEQ in material discovery and remediation efforts of Hazardous Materials.
- Experienced in TCEQ guidance for the investigation and remediation of Hazardous Materials under the TCEQ Voluntary Cleanup Program and Texas Risk Reduction Program Rules.

5 THIRD PARTY AGREEMENTS

6 UTILITY ADJUSTMENTS

6.1 General Requirements

A number of existing Utilities are located within or in the vicinity of the Project ROW, some pursuant to statutory rights and some pursuant to property rights. Certain of those existing Utilities will need to be relocated or otherwise adjusted in order to accommodate the Project. This Section 6 establishes procedures and requirements for Adjusting Utilities including such processes as coordination with Utility Owners, administration of the engineering, construction and other activities necessary for Utility Adjustments, and required documentation. This Section 6 reference certain TxDOT forms for Developer's use in Adjusting Utilities. Copies of those forms are included in Attachment -7 (Utility Forms). Except as otherwise provided in this Section 6 or directed by TxDOT, whenever a TxDOT form is provided in the attachment as noted in Book 2, Developer shall prepare all forms of the same type using the TxDOT form.

Developer shall cause all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Project, in both its initial configuration and in its Ultimate Configuration. TxDOT will assist Developer in the Utility Adjustment process, to the extent described in the CDA Documents. Some Utility Adjustments may be performed by the Utility Owner with its own forces and/or contractors and consultants (i.e., Owner-Managed); all others shall be performed by Developer with its own forces and/or Contractors and consultants (subject to any approval rights required by the Utility Owner for those working on its facilities) (i.e., Developer-managed). The allocation of responsibility for the Utility Adjustment Work between Developer and the Utility Owners shall be specified in the Utility Agreements.

Developer's obligations regarding reimbursement to Utility Owners for eligible costs of Utility Adjustment Work, and Developer's obligations regarding the accommodation of Utilities from and after the Service Commencement Date, are set forth in Book 2, Section 6.1.

This Section 6 does not address Utility services to the Project. Utility services to the Project shall be the subject of separate agreements between Developer and Utility Owners.

6.1.1 *When Utility Adjustment is Required*

A Utility Adjustment may be necessary to accommodate the Project for either or both of the following reasons: (a) a physical conflict between the Project and the Utility, and/or (b) an incompatibility between the Project and the Utility based on the requirements in Section 6.2.1 (Standards), even though there may be no physical conflict. The physical limits of all Utility Adjustments shall extend as necessary to functionally replace the existing Utility, whether inside or outside of the Project ROW. Section 6.2.4.2 (Acquisition of Replacement Utility Property Interests) contains provisions that address the acquisition of easements for Utilities to be installed outside of the Project ROW.

Utilities may remain in their existing locations within the Project ROW if (a) the requirements of Section 6.2.1 (Standards) are met, and (b) the existing location will not adversely affect the construction, operation, safety, maintenance and/or use of the Project.

6.1.2 *Certain Components of the Utility Adjustment Work*

6.1.2.1 Coordination

Developer shall communicate, cooperate, and coordinate with TxDOT, the Utility Owners and potentially affected third parties, as necessary for performance of the Utility Adjustment Work. Developer shall be responsible for preparing (unless prepared by the Utility Owner) and securing execution (by Developer and the Utility Owner) of all necessary agreements. All such executed Utility Agreements must be approved by TxDOT prior to taking effect.

All executed Utility Agreements between Developer and Utility Owners must be approved by TxDOT prior to taking effect.

6.1.2.2 Betterments

Replacements for existing Utilities shall be designed and constructed to provide service at least equal to that offered by the existing Utilities, unless the Utility Owner specifies a lesser replacement. Utility Enhancements are not included in the Work; however, any Betterment work furnished or performed by Developer as part of a Utility Adjustment shall be deemed added to the Work, on the date the Utility Agreement providing for same becomes fully effective. Developer shall perform all coordination necessary for Betterments.

6.1.2.3 Protection in Place

Developer shall be responsible for Protection in Place of all Utilities impacted by the Project as necessary for their continued safe operation and structural integrity and to otherwise satisfy the requirements described in Section 6.2.1 (Standards).

6.1.2.4 Abandonment and Removal

Developer shall make all arrangements and perform all work necessary to complete each abandonment or removal (and disposal) of a Utility in accordance with the requirements listed in Section 6.2.1 (Standards), including obtaining Governmental Approvals and consent from the affected Utility Owner and any affected landowner(s), or shall confirm that the Utility Owner has completed these tasks.

6.1.2.5 Service Lines and Utility Appurtenances

Whenever required to accommodate construction, operation, maintenance and/or use of the Project, Developer shall cause Service Line Adjustments and Utility Appurtenance Adjustments. On completion of these, Developer shall cause full reinstatement of the roadway, including reconstruction of curb, gutter, sidewalks, and landscaping, whether the Utility Adjustment Work is performed by the Utility Owner or by Developer.

6.1.2.6 Early Adjustments

Early Adjustments, if any, are addressed in Book 2, Section 6..

6.1.3 Reserved

6.1.4 Agreements Between Developer and Utility Owners

Except as otherwise stated in this Section 6 or in the Agreement, each Utility Adjustment shall be specifically addressed in a Master Utility Adjustment Agreement (MUAA) or in a Utility Adjustment Agreement Amendment (UAAA), as described elsewhere in this Section 6. Developer is responsible for preparing, negotiating (to the extent allowed by this Section 6), and obtaining execution by the Utility Owners, of all Utility Agreements, (including preparing all necessary exhibits and information about the Project, such as reports, Plans and surveys). A Utility Agreement is not required for any Utility Adjustment consisting solely of Protection in Place in the Utility's original location within the Project ROW, unless the Utility Owner is being reimbursed for costs incurred by it on account of such Protection in Place.

6.1.4.1 Master Utility Adjustment Agreements (MUAA)

Developer shall enter into one or more MUAAs with each affected Utility Owner to define the design, material, construction, inspection, and acceptance standards and procedures necessary to complete Utility Adjustments, as well as to define Developer's and the Utility Owner's respective responsibilities for Utility Adjustment costs and Utility Adjustment activities such as material procurement, construction, inspection, and acceptance. A MUAA may address more than one Utility Adjustment for the same Utility

Owner. Additional Adjustments may be added to an existing MUAA by a Utility Adjustment Agreement Amendment (UAAA).

Developer shall prepare each MUAA using the standard form of TxDOT Master Utility Adjustment Agreement (Owner-Managed) or TxDOT Master Utility Adjustment Agreement (Developer-Managed), copies of which are in the attachment as noted in Book 2.

Promptly following issuance of NTP1, Developer shall begin negotiations with each affected Utility Owner to reach agreement on one or more MUAAs. Developer shall use good faith efforts to finalize a MUAA with each affected Utility Owner within a reasonable time period after issuance of NTP1. Developer shall include any proposed changes to a standard form (other than filling in blanks specific to a particular Utility Owner) in a Utility Owner-specific addendum. Each MUAA (including the Utility Adjustment Plans attached thereto) shall be subject to TxDOT review and approval as part of a Utility Assembly.

6.1.4.2 Utility Adjustment Agreement Amendments

Except where Utility Adjustment Field Modifications are permitted pursuant to Section 6.4.7 (Utility Adjustment Field Modifications), modification of an executed MUAA or any component thereof, after it has been approved by TxDOT as part of a Utility Assembly, shall be stated in a Utility Adjustment Agreement Amendment (UAAA). A UAAA may be used only when the allocation of responsibility for the Utility Adjustment Work covered by that UAAA is the same as in the underlying Utility Agreement; otherwise, an additional MUAA will be required.

Each UAAA (including any Utility Adjustment Plans attached thereto) shall be subject to TxDOT's approval as part of a Supplemental Utility Assembly. Except as otherwise directed by TxDOT or provided in an applicable Utility Agreement, Developer shall prepare all UAAAs using the standard form included in the attachment as noted in Book 2.

6.1.5 Recordkeeping

Developer shall maintain construction and inspection records in order to ascertain that Utility Adjustment Work is accomplished in accordance with the terms and in the manner proposed on the approved Utility Adjustment Plans and otherwise as required by the CDA Documents and the applicable Utility Agreement(s).

6.2 Administrative Requirements

6.2.1 Standards

All Utility Adjustment Work shall comply with all applicable Laws, these Technical Provisions, the Utility Adjustment Standards applicable pursuant to Book 1, Section 7.5, and the requirements specified in this Section 6.

6.2.2 Communications

6.2.2.1 Communication with Utility Owners: Meetings and Correspondence

Developer is responsible for holding meetings and otherwise communicating with each Utility Owner as necessary to timely accomplish the Utility Adjustments in compliance with the CDA Documents. TxDOT will participate in these meetings if requested by the Utility Owner or Developer, or otherwise as TxDOT deems appropriate.

At least three Business Days in advance of each scheduled meeting, Developer shall provide notice and an agenda for the meeting separately to TxDOT and the appropriate Utility Owner. Developer shall prepare minutes of all meetings with Utility Owners and shall keep copies of all correspondence between Developer and any Utility Owner.

Before distribution of any mass mailings to Utility Owners, Developer shall submit to TxDOT, for its review and comment the form, content, and addressees of any such mass mailings. For purposes of this Section 6.2.2.1, the term “mass mailing” means correspondence that is sent to 50 percent or more of Utility Owners within a three-week time period, and contains substantially the same content with respect to each Utility Owner.

6.2.3 Utility Adjustment Team

Developer shall provide a Utility Adjustment team with appropriate qualifications and experience for the Utility Adjustment Work. Developer shall provide the names and contact details, titles, job roles, and specific experience of the team members in the PMP. Specifically, Developer shall provide a Utility Manager (UM) and a Utility Design Coordinator (UDC) as described herein.

The UM’s primary work responsibility shall be the performance of all Developer’s obligations with respect to Utility Adjustments. The Utility Manager shall have a bachelor’s degree, and have at least four years of relevant experience in coordinating and solving complex utility adjustments on highway improvement projects. The Utility Manager should be authorized by the Developer to approve all financial and technical modifications associated with utility adjustments, and modifications to the utility agreement.

The UDC shall be a Registered Professional Engineer. The UDC shall be responsible for coordinating the Utility Adjustment design with the overall highway design features during the planning, design, and construction phases of the Work.

6.2.4 Real Property Matters

Developer shall provide the services described below in connection with existing and future occupancy of property by Utilities.

6.2.4.1 Documentation of Existing Utility Property Interests -- Affidavits

For each Existing Utility Property Interest within the Project ROW claimed by any Utility Owner, Developer shall include an Affidavit of Property Interest in the applicable Utility Assembly, with documentation of the Existing Utility Property Interest (e.g., an easement deed) attached. Any such claim shall be subject to TxDOT’s review as part of its Utility Assembly review. Except as otherwise directed by TxDOT, Developer shall prepare all Affidavits of Property Interest using the standard forms included in the attachment as noted in Book 2.

6.2.4.2 Acquisition of Replacement Utility Property Interests

Each Utility Owner will be responsible for acquiring any Replacement Utility Property Interests that are necessary for its Utility Adjustments. Developer shall have the following responsibilities for each acquisition:

1. Developer shall coordinate with, and provide the necessary information to, each Utility Owner as necessary for the Utility Owner to acquire any Replacement Utility Property Interests required for its Utility Adjustments.
2. If any of Developer-Related Entities assists a Utility Owner in acquiring a Replacement Utility Property Interest, such assistance shall be by separate contract outside of the Work, and Developer shall ensure that the following requirements are met:
 - The files and records must be kept separate and apart from all acquisition files and records for the Project ROW.
 - The items used in acquisition of Replacement Utility Property Interests (e.g., appraisals, written evaluations and owner contact reports) must be separate from the purchase of the Project ROW.

- Any Developer-Related Entity personnel negotiating the acquisition of Replacement Utility Property Interests must be different from those negotiating the acquisition of Project ROW.

Developer is not responsible for Utility Owner condemnation proceedings.

6.2.4.3 Relinquishment of Existing Utility Property Interests

Developer shall cause the affected Utility Owner to relinquish each Existing Utility Property Interest within the Project ROW, unless the existing Utility occupying such interest is either (i) remaining in its original location or (ii) being reinstalled in a new location still subject to such interest.

6.2.4.4 Quitclaim Deeds

Except as otherwise directed by TxDOT, Developer shall prepare a Quitclaim Deed for each relinquishment of an Existing Utility Property Interest using TxDOT's standard form included in the attachment as noted in Book 2. Each Quitclaim Deed shall be subject to TxDOT's review as part of a Utility Assembly as described below.

Developer understands and expects that a Utility Owner will not relinquish any Existing Utility Property Interest until after the Adjusted Utility has been accepted by the Utility Owner in its new location. Accordingly, instead of an executed Quitclaim Deed, the Utility Assembly for such a Utility Adjustment shall include a letter signed by the Utility Owner's authorized representative confirming that the interest will be quitclaimed upon completion of the Utility Adjustment, and a copy of the unsigned Quitclaim Deed. In these cases, Developer shall obtain the executed Quitclaim Deed promptly upon completion of the Utility Adjustment.

6.2.4.5 Utility Joint Use Acknowledgements

Developer shall prepare a Utility Joint Use Acknowledgment for:

1. Each Utility proposed to be relocated within the Project ROW
2. Each Utility proposed to remain in its existing location within the Project ROW
3. Any Existing Utility Property Interest located within the Project ROW that is not required to be relinquished pursuant to Section 6.2.4.3 (Relinquishment of Existing Utility Property Interests), and is not addressed in the foregoing clause (a) or clause (b)

Except as otherwise directed by TxDOT in its sole discretion, Developer shall prepare all Utility Joint Use Acknowledgments using TxDOT's standard form included in the attachment as noted in Book 2. Developer also shall prepare all required documentation to be included with each Utility Joint Use Acknowledgment.

Developer shall arrange for the Utility Owner to execute each Utility Joint Use Acknowledgment. Each Utility Joint Use Acknowledgment (executed by the Utility Owner) shall be subject to TxDOT's approval as part of a Utility Assembly.

6.2.4.6 Documentation Requirements

Developer shall prepare, negotiate (to the extent permitted by this Section 6.2.4 (Real Property Matters)), and obtain execution by the Utility Owner of (and record in the appropriate jurisdiction, if applicable) all agreements and deeds described in this Section 6.2.4, including all necessary exhibits and information concerning the Project (e.g., reports, Plans, and surveys). Each agreement or deed shall identify the subject Utility(ies) by the applicable Utility Assembly Number (*[four-digit number beginning with 0500]*), and shall also identify any real property interests by parcel number or highway station number, or by other identification acceptable to TxDOT.

6.3 Design

6.3.1 *Developer's Responsibility for Utility Identification*

Developer bears sole responsibility for ascertaining, at its own expense, all pertinent details of Utilities located within the Project ROW or otherwise affected by the Project, whether located on private property or within an existing public ROW, and including all Service Lines.

Developer shall prepare and submit to TxDOT, a Utility Strip Map showing the information obtained and/or confirmed pursuant to this Section 6.3.1. Developer's Utility Strip Map shall show in plan view all Utilities within the Project ROW or otherwise impacted by the Project, in each case detailing the type of Utility facility (communication, gas, oil, water, etc.) and the Utility Owner's name and contact information. The scale of the Utility Strip Map shall be as set forth in Book 2. Developer shall update the information provided in the Utility Strip Map with SUE data and shall submit the same to TxDOT in accordance with the PMP.

6.3.2 *Technical Criteria and Performance Standards*

All design plans for Utility Adjustment Work, whether furnished by Developer or by the Utility Owner, shall be consistent and compatible with the following:

- The applicable requirements of the CDA Documents, including Section 6.2.1 (Standards)
- The Project as initially designed and constructed as well as the Ultimate Configuration
- Any Utilities remaining in, or being installed in, the same vicinity
- All applicable Governmental Approvals
- Private approvals of any third parties necessary for such work

6.3.3 *Utility Adjustment Concept Plans*

Developer shall prepare a proposed conceptual Utility design (a Utility Adjustment Concept Plan) for the Project (or proposed Utility Adjustment Concept Plans for various segments of the Project, as appropriate), showing the approximate location of each existing Utility, the existing Utilities to remain, and Developer's Utility Adjustment recommendations.

In accordance with the PMP, Developer shall submit the proposed Utility Adjustment Concept Plan(s) to TxDOT for its review. The Utility Adjustment Concept Plan(s) shall be submitted in both tabular and plan formats. The plan(s) shall be color-coded and shall utilize a scale that clearly depicts all of the required information. Developer shall coordinate with the affected Utility Owners as necessary to obtain their respective concurrence with the Utility Adjustment Concept Plan(s) as initially submitted to TxDOT and with any subsequent revisions.

6.3.4 *Utility Adjustment Plans*

Utility Adjustment Plans, whether furnished by Developer or by the Utility Owner, shall be signed and sealed by a Registered Professional Engineer (PE).

6.3.4.1 *Plans Prepared by Developer*

Where Developer and the Utility Owner have agreed that Developer will furnish a Utility Adjustment design, Developer shall prepare and obtain the Utility Owner's approval of plans, specifications, and cost estimates for the Utility Adjustment (collectively, "Utility Adjustment Plans") by having an authorized representative of the Utility Owner sign the plans as "reviewed and approved for construction." The Utility Adjustment Plans (as approved by the Utility Owner) shall be attached to the applicable Utility Agreement, which Developer shall include in the appropriate Utility Assembly for TxDOT's approval.

Unless otherwise specified in the applicable Utility Agreement(s), all changes to Utility Adjustment Plans previously approved by the Utility Owner (excluding estimates, if the Utility Owner is not responsible for any costs) shall require written Utility Owner approval. Developer shall transmit any TxDOT comments

to the Utility Owner, and shall coordinate any modification, re-approval by the Utility Owner and re-submittal to TxDOT as necessary to obtain TxDOT's approval.

6.3.4.2 Plans Prepared by the Utility Owner

For all Utility Adjustment Plans to be furnished by a Utility Owner, Developer shall coordinate with the Utility Owner as necessary to confirm compliance with the applicable requirements. Those Utility Adjustment Plans shall be attached to the applicable Utility Agreement, which Developer shall include in the appropriate Utility Assembly for TxDOT's approval. Developer shall transmit any TxDOT comments to the Utility Owner, and shall coordinate any modification, review by Developer and re-submittal to TxDOT as necessary to obtain TxDOT's approval.

6.3.4.3 Design Documents

Each proposed Utility Adjustment shall be shown in the Design Documents, regardless of whether the Utility Adjustment Plans are prepared by Developer or by the Utility Owner.

6.3.4.4 Certain Requirements for Underground Utilities

Casing as specified in the Utility Accommodation Rules (UAR) shall be used for all underground Utilities crossing the Project ROW. However, high-pressure gas and liquid petroleum pipelines may be allowed to cross the Project ROW without steel casing as long as the requirements of the Utility Accommodation Rules are met. All high-pressure gas pipelines within the Project ROW shall comply with a design factor "F" = 0.6 or less as required by the class location of the pipeline.

Refer to Section 14 - Rail for certain design requirements for underground Utilities within the potential freight railroad corridor.

6.3.4.5 Utility Assemblies

Each Utility Adjustment (as well as each Utility remaining in place in the Project ROW and not requiring any Protection in Place or other Utility Adjustment) shall be addressed in a Utility Assembly prepared by Developer and submitted to TxDOT for its review and comment, and for TxDOT's approval of any items for which this Section 6, including attachments as noted in Book 2, requires TxDOT's approval. Each Utility Adjustment shall be addressed in a full Utility Assembly, unless it is appropriate for a Supplemental Utility Assembly or Abbreviated Utility Assembly, as described below. Developer shall coordinate with the Utility Owner to prepare all components of each Utility Assembly. Completion of the review and comment process for the applicable Utility Assembly, as well as issuance of any required TxDOT approvals, shall be required before the start of construction for the affected Utility Adjustment Work.

Provisions governing the procedure for and timing of Utility Assembly submittals are in Section 6.5 (Deliverables).

All Utility Adjustments covered by the same initial MUAA shall be addressed in a single full Utility Assembly, which shall include all items described in the attachments noted in Book 2.

Supplemental Utility Assemblies. For each UAAA, Developer shall prepare a supplement to the Utility Assembly for the relevant initial MUAA (a Supplemental Utility Assembly), covering all Utility Adjustments addressed in the UAAA. The Supplemental Utility Assembly shall contain a transmittal memo, Utility Assembly Checklist, proposed UAAA cost estimate, a proposed UAAA which has been executed by the Utility Owner and Developer (one original in each of the two original Supplemental Utility Assemblies), including all required attachments, and applicable revisions to the Utility Adjustment Plans, as well as Utility Joint Use Acknowledgement(s) and Affidavit(s) of Property Interest, if applicable. The transmittal memo shall briefly describe the desired amendment and explain why the amendment is necessary. Each of the foregoing items shall comply with the requirements for same described in Attachment 8 (Utility Assembly and Tracking Report Requirements).

Abbreviated Utility Assemblies. Developer shall prepare an Abbreviated Utility Assembly for each Utility proposed to remain at its original location within the Project ROW that is not required to be addressed in a MUAA or UAAA, or for a group of such Utilities. Each Abbreviated Utility Assembly shall contain a transmittal memo recommending that the subject Utility(ies) remain in place, a completed Utility Assembly Checklist, a certification from the Utility Owner approving leaving the Utility(ies) in place, as well as Utility Joint Use Acknowledgement(s) and Affidavit(s) of Property Interest, if applicable. Each of the foregoing items shall comply with the requirements for same described in the attachments noted in Book 2.

6.4 Construction

6.4.1 Reserved

6.4.2 General Construction Criteria

All Utility Adjustment construction performed by Developer shall conform to the requirements listed below. In addition, Developer is responsible for verifying that all Utility Adjustment construction performed by each Utility Owner conforms to the requirements described below. In case of nonconformance, Developer shall cause the Utility Owner (and/or its contractors, as applicable) to complete all necessary corrective work or to otherwise take such steps as are necessary to conform to these requirements.

1. All criteria identified in Section 6.3.2 (Technical Criteria and Performance Standards)
2. The Utility Adjustment Plans included in the Utility Agreement approved by TxDOT (other than Utility Adjustment Field Modifications complying with Section 6.4.7 (Utility Adjustment Field Modifications))
3. All Project safety and environmental requirements
4. The ROW acquisition schedule described in Section 7 (ROW)

6.4.3 Inspection of Utility Owner Construction

In the PMP, Developer shall set forth procedures for inspection of all Utility Adjustment Work performed by Utility Owners (and/or their contractors) to verify compliance with the applicable requirements described in Section 6.4.2 (General Construction Criteria).

6.4.4 Scheduling Utility Adjustment Work

The Utility Adjustment Work (other than construction) may begin at any time following issuance of NTP1. Refer to Book 2, Section 6.4.4 for the conditions to commencement of Utility Adjustment Construction Work by Developer. Developer shall not arrange for any Utility Owner to begin any demolition, removal, or other Construction Work for any Utility Adjustment until all of the following conditions are satisfied:

1. The Utility Adjustment is covered by an executed Utility Agreement (and any conditions to commencement of such activities that are included in the Utility Agreement have been satisfied);
2. Availability and access to affected Replacement Utility Property Interests have been obtained by the Utility Owner (and provided to Developer, if applicable);
3. If any part of the Construction Work for the Utility Adjustment will affect the Project ROW, the condition set forth in Book 2, Section 6.4.4 has been satisfied.
4. If applicable, the Alternate Procedure List has been approved by FHWA, and either (a) the affected Utility is on the approved Alternate Procedure List, as supplemented, or (b) the Utility Owner is on the approved Alternate Procedure List, as supplemented.
5. The review and comment process has been completed and required approvals have been obtained for the Utility Assembly covering the Utility Adjustment.

6. All Governmental Approvals necessary for the Utility Adjustment construction have been obtained, and any pre-construction requirements contained in those Governmental Approvals have been satisfied.
7. All other conditions to that Work stated in the CDA Documents have been satisfied.

6.4.5 Standard of Care Regarding Utilities

Developer shall carefully and skillfully carry out all Work impacting Utilities and shall mark, support, secure, exercise care, and otherwise act to avoid damage to Utilities. At the completion of the Work, the condition of all Utilities shall be at least as safe and permanent as before.

6.4.6 Emergency Procedures

Developer shall provide Emergency procedures with respect to Utility Adjustment Work in the PMP. Developer shall obtain Emergency contact information from, and establish Emergency procedures with each Utility Owner.

6.4.7 Utility Adjustment Field Modifications

Developer shall establish a procedure to be followed if a Utility Adjustment Field Modification is proposed by either Developer or a Utility Owner, after the Utility Assembly (which includes the Utility Adjustment Plans) has been approved. The procedure shall contain, at minimum, the following processes:

1. The Utility Owner's review and approval of a Utility Adjustment Field Modification proposed by Developer, or Developer's review and approval of a Utility Adjustment Field Modification proposed by the Utility Owner;
2. Submittal of plans for the proposed Utility Adjustment Field Modification to TxDOT for its review and comment;
3. Transmittal of Utility Adjustment Field Modifications to the appropriate construction field personnel;
4. Inclusion of any Utility Adjustment Field Modifications in the Record Drawings for the Project.

Developer shall cause the procedure to be followed for all Utility Adjustment Field Modifications, whether the construction is performed by Developer or by the Utility Owner.

6.4.8 Switch Over to New Facilities

After a newly Adjusted Utility has been accepted by the Utility Owner and is otherwise ready to be placed in service, Developer shall coordinate with the Utility Owner regarding the procedure and timing for placing the newly Adjusted Utility into service and terminating service at the Utility being replaced.

6.4.9 Record Drawings

Developer shall provide Record Drawings to each Utility Owner for its Adjusted Utilities, in accordance with the applicable Utility Agreement(s).

Developer shall provide Record Drawings to TxDOT (regardless of whether design and/or construction of the subject Utilities was furnished or performed by Developer or by the Utility Owner). These drawings shall show the location of, and label as such, all abandoned Utilities, shall show and label all other Utilities, whether remaining in place or relocated, located within the Project ROW or otherwise impacted by the Project, and shall otherwise comply with Section 2 (Project Management). Developer shall provide the Record Drawings for each Adjustment to TxDOT not later than 90 Days after the Utility Owner accepts the Adjustment or before such earlier deadline as is specified elsewhere in the CDA Documents.

6.4.10 Maintenance of Utility Service

All Utilities shall remain fully operational during all phases of construction, except as specifically allowed and approved in writing by the Utility Owner. Developer shall schedule Utility Adjustment Work in order to minimize any interruption of service, while at the same time meeting the Project Schedule and taking into consideration seasonal demands.

6.4.11 Traffic Control

Developer shall be responsible for, and the Construction Traffic Management Plan shall cover, all traffic control made necessary by for Utility Adjustment Work, whether performed by Developer or by the Utility Owner. Traffic control for Adjustments shall be coordinated with, and subject to approval by, the local agency(ies) with jurisdiction. Traffic control shall comply with the guidelines of the TMUTCD and of Section 18 (Traffic Control).

6.5 Deliverables

Developer shall time all Submittals described in this section to meet the Project Schedule, taking into account TxDOT's designated review and response time set forth in Book 2, Section 6.5. All deliverables shall conform to the standards required in the Project Management Plan.

6.5.1 Maximum Number of Submittals

Developer shall coordinate all Submittals required pursuant to this Section 6.5, so as not to overburden TxDOT's staff and consultants. In each calendar week, Developer shall not submit more than:

1. Two Utility Assemblies (excluding Supplemental or Abbreviated Utility Assemblies)
2. Two of any documentation constituting any of the following:
 - A modified or additional item submitted in response to TxDOT comments on a particular Utility Assembly
 - A Quitclaim Deed
 - Any other type of relinquishment document
3. Two Supplemental Utility Assemblies;
4. Two Abbreviated Utility Assemblies.

Where the number of Submittals exceeds these limits, the requirements of Book 2, Section 6.5.1 shall apply.

6.5.2 Developer's Utility Tracking Report

Developer shall maintain a Utility Tracking Report in tabular form, listing all Utilities located within the Project ROW or otherwise potentially affected by the Project. The Utility Tracking Report shall include the items specified in the attachments noted in Book 2.

Developer shall submit the Utility Tracking Report to TxDOT and update it periodically in accordance with the PMP.

6.5.3 Utility Assembly Submittals

The following procedure shall govern submittal and review of each Utility Assembly, including Supplemental and Abbreviated Utility Assemblies:

1. Before submitting a Utility Assembly to TxDOT, Developer shall:
 - Verify that each subject Utility (or the Utility Owner) is on the approved Alternate Procedure List, if applicable;
 - Submit the complete Utility Assembly to the quality control/quality assurance entity designated by Developer in accordance with the PMP; and
 - Resolve all comments made by the quality control/quality assurance entity, coordinating with the Utility Owner as appropriate.
2. Developer shall submit to TxDOT three identical and complete originals of each Utility Assembly (each of which shall be bound and labeled "Developer Copy," "TxDOT Copy," or "Utility Owner Copy," as appropriate), complying with the requirements of Book 2, Section 6.5.3. The "TxDOT Copy" shall be color coded. These submittals shall be for TxDOT's review and comment, except for any components of the Utility Assembly for which TxDOT's approval is required by this Section 6.5.

TxDOT will review the Utility Assembly for compliance with the requirements of this Section 6.5.3, and within 10 Business Days will return the Utility Assembly to Developer with the appropriate notations (pursuant to Book 2, Section 6.5.3) to reflect its responses. Developer shall transmit any TxDOT comments to the Utility Owner, and shall coordinate any modification, review and approval by the Utility Owner and re-submittal to TxDOT, as necessary to resolve all TxDOT comments and/or obtain TxDOT's approval, as applicable. Upon (a) TxDOT's approval of any Utility Assembly components for which TxDOT's approval is required, and (b) completion of the review and comment process for all other Utility Assembly components, TxDOT will sign three originals of any approved UJUA and of any other components of the Utility Assembly for which this Section 6 requires TxDOT's signature.

6.5.4 FHWA Alternate Procedure

The Developer will develop the Alternate Procedure List that includes the utility owner's name, approximate station numbers and estimated cost. TxDOT will then submit to the FHWA the Alternate Procedure List in order to obtain FHWA authorization for federal reimbursement. Promptly upon determining that any additional Utility Owner not referenced on the Alternative Procedure List is impacted by the Project, Developer shall submit to TxDOT all documentation as referenced above in order to update the Alternative Procedure List.

TxDOT will forward the approved Alternate Procedure List (and any amendments thereto) to Developer, promptly upon receipt of same from the FHWA.

7 RIGHT OF WAY (ROW)

7.1 General Requirements

Developer's obligations in respect of the acquisition of Project ROW are set forth in Book 1, Section 7.4.

This Section 7 sets forth the ROW activities assigned to Developer, including pre-acquisition and acquisition activities, and designates which ROW activities TxDOT will conduct. This section also sets forth the requirements applicable to the Work assigned to Developer related to the acquisition of Project ROW. Developer shall provide all services necessary to acquire title to the Project ROW, in form and substance acceptable to TxDOT, in the name of the State; relocation of displaces; and clearance/demolition of the improvements from the Project ROW, as more fully described in the following sub-sections.

Except as otherwise set forth in the Agreement, Developer's Project ROW staff and/or Contractors will function as independent contractors while acquiring Project ROW, and not as an agent, representative, or employee of TxDOT.

7.2 Administrative Requirements

7.2.1 Standards

Project ROW shall be acquired in accordance with State and federal Law and the practices, guidelines, procedures, and methods contained in the following as it pertains to Right of Way:

- TxDOT *Right of Way Manual* Collection (available online at <http://manuals.dot.state.tx.us>)
- TxDOT *Access Management Manual* (available online at <http://manuals.dot.state.tx.us>)
- TxDOT *Survey Manual*
- TxDOT *Appraisal and Review Manual*

Pursuant to the applicable federal regulations, Developer shall (i) acquire ROW parcels for the Project on behalf of the State, but without the direct participation of TxDOT, subject to TxDOT's rights of review, approval, and audit; (ii) certify acceptance of the TxDOT *Right of Way Manual*; (iii) provide adequate access to all occupied properties; (iv) maintain Utility service to occupied properties until relocation is complete; and (v) not permit open burning within 1000 feet of an occupied dwelling.

Developer shall maintain a complete and current set of the TxDOT *Right of Way Manual* Collection, Volumes 1 through 8 (<http://manuals.dot.state.tx.us/dynaweb>), TxDOT *Access Management Manual* (<http://manuals.dot.state.tx.us/dynaweb>), TxDOT *Appraisal and Review Manual*, and a current approved Project ROW map for public use. Any TxDOT forms referenced in this section shall be found in the TxDOT *Right of Way Manual* Collection or will be provided by TxDOT.

All Project ROW activities must be completed and documented in compliance with all applicable Laws, including the Uniform Act, and the rules and regulations implementing the Uniform Act.

7.2.2 Software Requirements

Developer shall employ software that is compatible with the software in use by TxDOT, or fully transferable to TxDOT's systems. Developer must supply and maintain a Web-based, parcel-by-parcel database that incorporates the fields and information required by TxDOT's approved ROW tracking system: ROWIS. Developer must maintain and participate in any other required ROW tracking system required by the CDA Documents or otherwise agreed to by the parties. The database shall be fully accessible to Persons authorized by TxDOT.

7.2.3 *ROW Acquisition Plan*

Developer shall prepare a ROW Acquisition Plan in accordance with the requirements of this Section 7 and Section 2 (Project Management). The ROW Acquisition Plan shall set forth Developer's organization including names, titles and qualifications of Key Personnel and other Project ROW personnel, integration of the Project ROW schedule into the Project Schedule, interface between design and Project ROW activities, documentation and reporting, quality control procedures and quality review standards.

The ROW Acquisition Plan shall contain, as a minimum, the following:

1. The name of TxDOT approved title company(ies) to be used for title services
2. The name and qualifications of the proposed ROW Acquisition Manager (ROW AM)
3. The resumes and qualifications for appraisers, appraisal reviewers, land planners, relocation agents, negotiators, real estate attorneys, and ROW personnel who shall have the minimum qualifications and experience specified in Section 7.2.7

The ROW Acquisition Plan shall establish the specific means by which Developer will:

- Provide sufficient personnel to achieve, in accordance with the Project Schedule, the goals and milestones established for Project ROW acquisition, relocation assistance, appraisals and appraisal review, and clearance/demolition of the improvements from the Project ROW.
- Provide administrative support.
- Provide for Spanish, visually impaired, or hearing impaired translation, as necessary.
- Provide documentation and reports.
- Produce and distribute acquisition and relocation brochures as approved by TxDOT.
- Establish, implement, and maintain quality control procedures and quality review standards for the acquisition for Project ROW.
- Prevent fraud, waste, and mismanagement.

Developer shall update the ROW Acquisition Plan regularly, at least quarterly, in accordance with the CDA Documents.

7.2.4 *Schedule and Review Procedures*

The Project Schedule shall indicate the date to begin the acquisition of the Project ROW and the anticipated completion date of acquisition activities for each parcel. TxDOT shall be advised of all Additional Properties and temporary rights or interests in real property to be acquired by Developer. In developing the Project Schedule, Developer will give priority to the acquisition of parcels that have significant impact on the Project Schedule and/or affect the Critical Path as so indicated. The monthly status reports required by Section 2.1.1 shall provide updated projections for the acquisition date of each parcel.

In developing the Project Schedule, Developer shall incorporate adequate time periods for TxDOT review and approval of Acquisition Packages. TxDOT intends to review the completed Acquisition Packages as expeditiously as possible; however, for the purposes of the Project Schedule, Developer shall assume that the reviews performed by TxDOT will require 10 Business Days for Acquisition Packages that Developer submits as final and complete in accordance with Section 7.3.6 (Project ROW Acquisition Package Approval), up to a maximum of three Acquisition Packages. Any Submittals that would require TxDOT to review more than three Acquisition Packages within any given ten Business Day period shall be considered excess, and TxDOT may defer its review of any such Acquisition Packages to a subsequent ten Business Day period (or periods as necessary). TxDOT will notify Developer of its election to defer any excess Acquisition Packages within ten Business Days after receipt. The balance of Acquisition Packages in excess of three will be rolled over to the next ten Business Day period and added to the Acquisition Package Submittals made by Developer in that period. When Developer opts to submit more than one Acquisition Package at any given time, Developer shall indicate the priority of required review in order to meet the Project Schedule.

If TxDOT notifies Developer that any submitted Acquisition Package has a deficiency, Developer shall correct such deficiency and resubmit the package to TxDOT. Resubmissions shall be treated as a new Acquisition Package as described above. An Acquisition Package shall be deficient, as determined by TxDOT, if any of its components fails to meet any of the criteria established by this section for such component, or contains any material errors or omissions. Schedule delays resulting from inadequate or incomplete submissions of Acquisition Packages shall be the responsibility of Developer and will not be eligible for treatment as a Relief Event or Compensation Event.

TxDOT reserves the right to undertake additional review on Acquisition Packages that contain or identify facts or issues of an unusual nature or which do not clearly fit within TxDOT standards and will notify Developer in writing that the review period will be extended by an additional ten Business Days before rendering a decision to Developer.

Developer may request TxDOT to do a preliminary review of the survey and appraisal before the complete Acquisition Package is submitted. TxDOT shall review the preliminary submission of the survey and appraisal and notify Developer of any deficiencies within ten Business Days after TxDOT's receipt of such preliminary submission.

7.2.5 Developer's Project ROW Scope of Services

Developer shall complete all administrative activities and prepare all documentation sufficient for Developer to acquire the Project ROW. Developer shall obtain TxDOT's review and prior written approval of all Project ROW maps and surveys, appraisals, legal descriptions, acquisition documentation, purchase price, requests to acquire Project ROW, condemnation-related activities, and funding/closing procedures. TxDOT will (i) approve and return the Project ROW acquisition documentation, (ii) provide review comments for incorporation by Developer in accordance with Section 7.2.4 (Schedule and Review Procedures), or (iii) in the case of an Acquisition Package that is deficient, notify Developer of the deficiency(ies) to be corrected by Developer in accordance with Section 7.2.4 (Schedule and Review Procedures). Except as otherwise authorized by applicable State and federal policy and regulations for early acquisition and approved by TxDOT, Developer shall not proceed with acquisition of the Project ROW until the NEPA Approval is issued, public involvement procedures have been completed, and ROW maps and legal descriptions for the applicable constructible segment as established by the logical termini of the Project have been prepared and approved by TxDOT. TxDOT will provide a separate release for each approved segment. Further, Developer shall not commence any negotiations with landowners nor will TxDOT begin eminent domain procedures until the specific Acquisition Package for that particular parcel is approved by TxDOT.

If Developer and the landowner cannot negotiate an agreed-upon purchase price, acceptable to TxDOT, TxDOT will commence acquisition of the property through eminent domain procedures. Developer shall not be permitted to commence any condemnation action through the statutory "Declaration of Taking" procedure without the express written consent of TxDOT. Consent may be withheld in TxDOT's sole and absolute discretion.

Developer shall not begin construction on any parcel of real estate unless property rights for the parcel have been conveyed and recorded in favor of TxDOT, possession has been obtained through eminent domain or any other method as provided for in Section 7.2.1 (Standards), or a Possession and Use Agreement has been validly executed and delivered by all necessary parties in accordance with Section 7.4.1 (Project ROW Negotiations).

7.2.6 Acquisition Process Summary

Developer's major activities with respect to the acquisition of the Project ROW include:

- Project ROW surveying and mapping
- Project ROW budget estimates and updates
- Title services

- Appraisal services
- Appraisal review
- Negotiations
- Closing services
- Relocation assistance
- Condemnation support services
- Clearance and demolition of Project ROW
- Environmental due diligence
- Documentation and document control
- Progress reports
- Project ROW administration and management
- Project ROW quality management
- Letter from Developer's design engineer certifying that the required Project ROW acquisition is necessary and that any proposed alternatives are not feasible or are cost prohibitive
- Obtaining rights of entry, as necessary

7.2.7 ROW Personnel Qualifications

Developer's ROW Acquisition Manager shall have at least five years experience managing the acquisition of transportation ROW projects for a condemning authority, be licensed as a real estate salesman or broker pursuant to the Texas Real Estate Act or rules established by the Texas Real Estate Commission, be familiar with appraisal and appraisal report review pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP), and be familiar with the Uniform Act and applicable Laws of the State of Texas.

Each appraiser and appraisal reviewers shall be licensed and certified in the State of Texas and shall have a minimum of five years experience in appraising real property for eminent domain purposes, including partial taking appraisal, partial taking appraisal review and expert witness testimony. He or she must also have been actively and continuously engaged for at least three years immediately preceding his or her selection for this Project in appraisal work primarily in the County(ies) defined in Book 2, or as approved by TxDOT. The appraisers and the appraisal reviewers shall have separate and distinct duties, and appraisers must be employed by different firms from the appraisal reviewers. Each appraiser shall be required to submit three samples of previous appraisal work prepared for eminent domain purposes. All appraisers preparing and signing appraisals must be approved by TxDOT before performing any appraisals on the Project. If required by TxDOT, the appraiser will be required to demonstrate his/her skills at expert witness testimony.

Each land planner shall have a minimum of five years experience in land planning, including experience with expert witness testimony in eminent domain proceedings. He or she must also have been actively and continuously engaged for at least three years immediately preceding his or her selection for this Project in land planning work primarily in the County(ies) defined in Book 2, or as approved by TxDOT. Developer shall provide a minimum of two land planners available to assist appraisers and complete land plans.

Each relocation agent shall have a minimum of three years experience in relocation assistance for ROW projects pursuant to the Uniform Act. A relocation agent's responsibilities shall include the following: Determination of eligibility of all displacees, contacting all displacees and informing them of their benefits, maintaining a file of all documentation concerning the relocation of the displacees, and extending all relocation assistance advisory services.

Each ROW negotiator shall be licensed either as a real estate sales person or broker pursuant to the Texas Real Estate Act or rules established by the Texas Real Estate Commission, and shall be familiar with appraisal and appraisal report review pursuant to the USPAP. The negotiator shall have a minimum of

three years experience in right of way negotiations. The ROW negotiator's responsibilities shall include the following: contact with property owners on the Project to discuss the acquisition of property needed for the Project, maintaining complete and accurate files of all transactions and contacts with the property owners and/or their representatives, and actively working toward a joint resolution to acquire the property with the property owner.

Each real estate attorney shall be licensed by the State of Texas and shall have at least five years experience in title review and curative matters. The following responsibilities can be handled by either the real estate attorney or qualified ROW personnel: coordinate and clear all title issues, and compliance assistance with State and federal acquisition requirements for the properties acquired for the Project.

ROW personnel shall have at least three years experience in title review and curative matters. ROW personnel's responsibilities shall include, but not be limited to the following: maintain complete and accurate files of all transactions and contacts with the property owners and/or their representatives, coordinate and clear all title issues and assist at closing the properties acquired for the Project.

7.2.8 Developer Conflict of Interest

If at any time, Developer or to the best of Developer's knowledge, any Developer-Related Entity directly or indirectly (i) acquires or has previously acquired any interest in real property likely to be parcels of the Project ROW or the remainders of any such parcels; (ii) loans or has previously loaned money to any interest holder in any real property likely to be a Project ROW parcel and accepts as security for such loan the parcel, or the remainder of any such parcel that is not a whole acquisition, or (iii) purchases or has previously purchased from an existing mortgagee the mortgage instrument that secures an existing loan against real property likely to be a Project ROW parcel, or the remainder of any such parcel, Developer shall promptly disclose the same to TxDOT. In the case of acquisitions, loans or mortgage purchases that occurred prior to the execution of the Agreement, such disclosure shall be made within ten days after execution of the Agreement.

In the event that Developer, or any subsidiary or parent company of Developer, acquires a real property interest, whether title or mortgage, in parcels of the Project ROW, the real property interest acquired or a release of mortgage as the case may be, shall be conveyed to the State of Texas without the necessity of eminent domain.

Developer shall not acquire or permit the acquisition by Developer or any Developer-Related Entity of any real property interest in a Project ROW parcel, whether in fee title or mortgage, for the purpose of avoiding compliance with the Laws, practices, guidelines, procedures and methods described in Section 7.2.1 (Standards).

7.2.9 Meetings

Developer shall attend meetings as requested by TxDOT. At such meetings Developer shall provide exhibits, take minutes, and distribute to all attendees for review and comment. Minutes will not be finalized until all attendees agree on content. Provide exhibits as requested by TxDOT.

7.2.10 Documentation and Reporting

Developer shall provide TxDOT with all specific reports and supporting documentation for review and approval during the acquisition process. All correspondence with TxDOT and property owners relating to acquisition of real property shall include a heading with the following information (at a minimum):

- County
- Control Section Job (CSJ) number
- Highway Designation
- Project limits
- Parcel number
- Name of record owner(s)

In administering and managing its Project ROW activities, Developer shall:

1. Maintain parcel records on file of all aspects of the acquisition process in accordance with TxDOT requirements and applicable Law. Each parcel file shall include all documents required by the CDA Documents, the FHWA, and/or TxDOT.
2. Provide monthly summaries for the cost of Project ROW acquisition and related relocation assistance including amounts authorized and amounts paid on a parcel-by-parcel basis and budget forecasting on an overall Project basis as requested by TxDOT.
3. Maintain and electronically transmit to TxDOT, in a format acceptable to TxDOT, monthly status reports including appraisal, acquisition and relocation status of all parcels and activities related to Project ROW, acquisition and disposition of Additional Properties and acquisition and disposition of temporary easements or other property interests, and provide weekly (or as requested) updates to TxDOT.
4. Evaluate and report to TxDOT, Subcontractor status and performance on a monthly basis or more frequently as requested.
5. Prepare and submit electronically to TxDOT, on a monthly basis, a spreadsheet that contains Project ROW specific data required in order to complete the fields in TxDOT's ROWIS tracking software program or as directed by TxDOT.
6. Input and update parcel status in TxDOT approved Web-based tracking system or as directed by TxDOT.

7.2.11 Responsibilities of Developer

As set forth in Book 1, Section 7.4.3 and as more fully described in this section, Developer shall be responsible for the costs of all services and preparation of all documentation for all Project ROW acquisition, easement acquisition, permitting and related relocation assistance for the Project. The Work related to Project ROW acquisition includes mapping, surveying, environmental assessment, testing and remediation, appraisal, appraisal review, negotiation, acquisition, procurement of title insurance, clearing of title, closing of acquisitions, condemnation support including expert witnesses required by TxDOT and/or the Attorney General's Office for all condemnation proceedings through special commissioner's hearings. The Developer shall also be responsible for all exhibits, transcripts, and photos associated with condemnation services and proceedings required by the Attorney General's Office through special commissioner's hearings through jury trials and appeals, relocation assistance, and clearance/demolition of improvements, as required.

Developer and TxDOT acknowledge that Developer has incorporated the value of saleable improvements not retained by the property owner into the Project ROW costs shown in the Financial Model, and that Developer, subject to the property owner's waiver of the rights to retain, shall concurrently with conveyance of the real property interest to the State of Texas, and without the necessity of further documentation executed by the State, obtain the rights to said saleable improvements. Developer shall not be entitled to a credit for any improvements retained by a property owner. Upon conveyance of the real property interest to the State of Texas, Developer shall comply with all applicable Laws with respect to relocation assistance and demolition.

Developer shall also be responsible for the costs of acquisition and documentation for the acquisition of any temporary right or interest in real property not necessary for the Project but that Developer deems advisable to acquire for work space, contractor lay-down areas, material storage areas, borrow sites, or any other convenience of Developer. Except as otherwise authorized by Law for temporary areas necessary for construction of the Project, TxDOT shall not be obligated to exercise its power of eminent domain in connection with Developer's acquisition of any such temporary right or interest, and TxDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests.

Developer shall pay the cost of, and shall be responsible for processing and issuing all payments of: agreed purchase prices or court awards and judgments; special commissioner's awards; relocation assistance payments; all legal, administrative, and incidental expenses of, or related to, Project ROW (including the purchase price of Project ROW for drainage and other required easements); and temporary easements or other interests in real property acquired for the Project.

Developer is responsible for the payment of all closing costs associated with the purchase of Project ROW in accordance with the Uniform Act and TxDOT policies.

7.2.12 Responsibilities of TxDOT

TxDOT will have the following responsibilities in connection with acquisition of Project ROW:

1. Except as otherwise set forth in this Section 7, provide final approval for all Acquisition Packages, relocation assistance payments, administrative settlement requests, negotiated settlement requests, court settlement requests, payments, and other approvals required by the CDA Documents, by the State, or by applicable Law within 10 Business Days after receipt of complete Acquisition Packages from Developer.
2. After receiving a complete condemnation packet from Developer in accordance with Section 7.4.4, TxDOT will submit a minute order request on the agenda of the next scheduled Texas Transportation Commission meeting; provided the completed condemnation package is submitted before the Commission's required deadline for eminent domain minute order requests.
3. TxDOT shall endeavor to reasonably accommodate a written request from Developer for early submission to the agenda of the Texas Transportation Commission in accordance with Section 7.2.12 of Book 2.
4. TxDOT will coordinate with the Office of the Attorney General to provide legal counsel to prepare and deliver to TxDOT the condemnation petition within 20 Business Days after the Attorney General's receipt of the condemnation packet, including Commission minute order approval. TxDOT will deliver the condemnation petition to Developer within ten Business Days after receipt of the condemnation petition from the Office of the Attorney General.
5. TxDOT will provide all coordination services between Developer and the Office of the Attorney General for prosecution of jury trials.
6. TxDOT will provide a ROW Administrator to serve as first point of contact for all Project ROW issues as set forth in 23 CFR § 710.313(d).

7.2.13 TxDOT Project Monitor/Reviewer

In addition to its review and approval authority as expressly set forth in other provisions of this Section 7, TxDOT may, at its sole discretion, audit and/or monitor the ROW activities and services performed by Developer. TxDOT may contract with independent consultants to assist it in fulfilling the audit/monitoring function provided that the audit authority is not delegated. The foregoing does not limit the authority of the Independent Engineer to audit the Project ROW activities and services of Developer.

In addition to any of the matters specifically required to be provided by Developer to TxDOT pursuant to the foregoing sections, Developer shall provide information to TxDOT as requested to assist in its review and assessment of the progress, timeliness, adequacy, or sufficiency of Developer's Project ROW activities.

7.2.14 Responsibilities of the Office of the Attorney General

The Office of the Attorney General, with the assistance of Developer and coordination of TxDOT, shall be responsible for implementing all necessary legal actions for acquiring and obtaining possession of the Project ROW (and any necessary temporary construction easements approved by TxDOT for acquisition by condemnation) through the eminent domain process and eviction process. The responsibilities of the Office of the Attorney General will include:

1. Preparation of complete petitions for condemnation with the appropriate court for a cause number to be assigned
2. Coordination with TxDOT on all legal matters concerning acquisition processes, including negotiated settlements
3. Analysis of recommended parcel values and/or appraisal issues
4. Additional legal advice and opinions as needed by TxDOT
5. Special commissioners' hearings
6. Jury trials including determination of expert witnesses and all appeals
7. Preparation, obtaining, and filing of all necessary legal documentation for eviction of property owners or tenants.

7.3 Pre-Acquisition Activities

7.3.1 Project ROW Surveying and Mapping

Developer shall perform all Project ROW surveying and mapping and shall prepare all Project ROW documents in accordance with applicable TxDOT Standards, including the TxDOT *Right of Way Manual*, the TxDOT *Survey Manual*, and the TxDOT *GPS Manual*. Developer shall refer to the current *Manual of Practice* by the Texas Society of Professional Land Surveyors and the *US National Map and Accuracy Standards*. Developer shall refer to Section 9 (Land Surveying) for additional survey requirements.

The Project ROW map shall be prepared by Developer and submitted to TxDOT for review and approval. The Project ROW map may be prepared in separate constructible segments established by the logical termini of the Project. TxDOT shall have 15 Business Days for review of each submitted ROW map, up to a maximum of 25 parcels. Any submittals that would require TxDOT to review more than 25 parcels in a ROW map within any given 15 Business Day period shall be considered excess, and TxDOT may defer its review of any such excess parcels to a subsequent 15 Business Day period (or periods as necessary).

Developer shall assemble an Acquisition Survey Document Package and deliver to TxDOT upon request of preliminary and/or final review. The Acquisition Survey Document Package shall include:

1. Three half size right of way maps on paper, Scale 1"= 100' (11"X 17").
2. One separate set of Originals signed and sealed by RPLS, legal and sketchy, traverse closure sheet and a copy of the parent track deed.
3. Create CD with DGN Master File, Map Sheets, Excel Point List and Raw Data File and/or Field Notes.

Developer shall submit the Acquisition Packages in conformance with Section 7.3.6 (Project ROW Acquisition Package Approval).

Developer shall prepare all Project ROW surveying and mapping in accordance with the following supplemental specifications:

1. Developer shall assemble an Acquisition Survey Document Package. The Acquisition Survey Document Package shall include the Project ROW map, a parcel (metes and bounds) description, and a parcel plat, with a closure report for each of these three items for each of the parcels to be acquired. The latter three items shall be on standard 8½" x 11" bond paper. The Project ROW map sheets shall be on 22" x 34" paper. Each final submission to TxDOT shall include two sets of each document, unless otherwise directed. Each map sheet and document page shall have an "as of" date near the lower right hand corner. The parcel plat and parcel description for a given parcel should show identical "as of" dates.
2. The Parcel, as shown on the ROW map sheet and plat, shall show all areas of denied access according to the current TxDOT *Access Control Management Manual*.

3. The point of beginning (POB) shall be located on the proposed Project ROW line and shown in all documents with its centerline (Survey Baseline) station and offset.
4. The point of commencing (POC), where applicable, shall be a well-defined monument, and shall be tied to the POB by measured bearing and distance. The POC shall not be located on any proposed Project ROW line, or existing Project ROW line within the proposed Project ROW.
5. The centerline (survey baseline) station and offset shall be shown on the Project ROW map sheets for all significant points along the Project ROW line such as point of curvature (PC), point of tangency (PT), point of intersection (PI), point of compound curvature (PCC), and point of reverse curvature (PRC), and for property line intersections (PLI) with the Project ROW line, and for any other monumentation points on the Project ROW line.
6. The centerline (survey baseline) station and offset shall be shown in the parcel description and parcel plat at the beginning and ending, being the points with the lowest station and the highest station, of each parcel along the proposed Project ROW line.
7. Project ROW map sheets shall include all curve data, with the station and coordinates of the PI, and the stations at each end (PC, PT, PRC, PCC), for every centerline (survey baseline) curve on that map sheet.
8. Any existing ROW lines being incorporated into the proposed Project ROW, including intersecting rights of way, shall be surveyed and monumented (if not previously monumented).
9. All Project ROW maps (and on the title sheet) and all parcel descriptions (at the end of the description) shall include a notation that identifies the State Plane Coordinate System and UTM zones, datum (NAD83) (HARN) (2002), and the Project grid-to-surface coordinate adjustment factor or refer to Primary Project Controls provided by TxDOT (refer to Section 9.2.3.1 and 9.2.3.2).
10. A Project ROW map title sheet with signature blocks shall be produced for each portion of the Project. Developer shall sign the Project ROW map.
11. All Project ROW maps shall include a control sheet (or sheets), to show the primary survey control points with their location relative to the Project.
12. The parcel description and parcel plat documents shall all be referenced as parts of the exhibit recorded with the deed, so the pages shall be numbered accordingly. For example, if the parcel description is two pages, the parcel plat is one page, then the first page of the parcel description is denoted "Page 1 of 3", the parcel plat is denoted "Page 3 of 3".
13. Improvements within 100 feet outside of all proposed Project ROW shall be depicted on the Project ROW map sheets. All improvements should be current as of the date of the on-the-ground property survey.
14. All visible improvements (buildings and structures) within 25 feet outside of the proposed Project ROW line shall be located by an "on-the-ground" survey and documented on the Project ROW map sheets and the parcel plats by measured offset distance from the proposed Project ROW line. Clearly indicate which distances are surveyed on-the-ground.
15. Calculated points shall be shown by a symbol on the drawing, with their relationship to the found reference points.
16. All property, city, county, abstract, section, and survey lines shall be indicated appropriately. A map legend should clearly define the line styles and symbols used.
17. Upon final submittal of the Project ROW documents to TxDOT, Developer shall cause the surveyor to mark on the ground, using permanent and stable monuments as defined in Section 663.17 of the General Rules of Procedures and Practices of the Texas Board of Professional Land Surveying (TBPLS), all significant points along the Project ROW line, as described above, and all property line intersections with the Project ROW line. TxDOT requires these monuments to be a ½-inch iron rod, driven just below surface level, capped by a TxDOT-labeled aluminum cap (rod-and-cap monument).
18. Prior to acceptance of the ROW maps and surveys by TxDOT, Developer shall cause a TxDOT Type II monument to be set at all significant points on the Project ROW line and at intersections

- with existing Project ROW lines, replacing monuments as described above (construct according to TxDOT specifications), unless otherwise directed by TxDOT.
19. Developer shall cause a TxDOT Type II monument to be set at all significant points on the Project ROW line and at intersections with existing Project ROW lines, replacing monuments as described above, unless directed by TxDOT. Project ROW line intersections with property lines shall remain monument by a ½-inch iron rod with a TxDOT aluminum cap (rod-and-cap monument). To reference all significant points along the centerline (survey baseline), Developer shall set a rod-and-cap monument; and upon completion of the Project ROW acquisition or as directed by TxDOT, Developer shall replace it with a TxDOT Type II monument, on the final Project ROW lines, perpendicularly left and right of each significant centerline point, regardless of the relative orientation of the final Project ROW line.
 20. For any required revisions, Developer shall resubmit to TxDOT all documents pertaining to the parcel to reflect the most recent revision date, and shall add a notation on the appropriate documents to state briefly the reason for the revision.
 21. Documents shall contain deed references (survey name, abstract number, volume and page or document number, grantee, and area) for all existing public right of way encountered within the Project limits. If there is no recorded information found, a note shall state “Based upon our research, there appears to be no recorded vesting deed for the public right of way as shown hereon”.
 22. The documents produced by the surveyor are the property of TxDOT, and release of any document shall be subject to TxDOT’s prior written approval.
 23. Developer shall cause the surveyor to include the denial of access line on the Project ROW map sheets and on the parcel plats, as required for controlled access facilities. Developer also shall cause the surveyor to describe the area of denied access in the parcel description and monument on the ground with a ½” iron rod with orange cap stamped “TxDOT ADL” the limits of the denial of access..
 24. The Project ROW map and each parcel plat shall include a parcel information table containing the areas, expressed in square feet, of the following: 1) the parent ownership as stated in all adjoining record vesting deeds or converted from the stated record acreage in those vesting deeds; 2) the parcel to be acquired as shown on the closure report for that parcel, and; 3) the remainder tract (item 1 minus item 2). If the parcel to be acquired consists of multiple parts, the Project ROW map shall show the net remainder. The parcel information table shall also contain the areas, expressed in acres, of the parent tract, the parcel to be acquired, and the remainder. This acreage (except stated record) shall be converted from the square footage as contained in the table. A note shall be included on the Project ROW map and on each parcel plat stating: “The acreage calculated and shown hereon is converted from the square footage shown hereon, and is for informational purposes only.” Parcels with area less than one acre will not require acreage units to also be shown.
 25. Within the proposed Project ROW, all property owned by a city, county, or other local public agency (LPA) in fee or easement that does not have a vesting deed shall be identified by a parcel number and included on the Project ROW map. Developer shall cause the surveyor to prepare a parcel description and parcel plat for use as an exhibit in the Project ROW acquisition (property transfer) documents.
 26. Developer shall cause an independent Registered Professional Land Surveyor (RPLS) to review the Acquisition Survey Document Package for consistency as to the information delineated thereon and for compliance with all applicable Technical Provisions and Survey Documents. The boundary location and the survey methods remain the responsibility of Developer, and are not part of this review process. TxDOT will have no obligation to accept the Acquisition Survey Document Package as complete until the reviewing RPLS has signed and sealed the compliance certificate (compliance certificate form to be provided by TxDOT).

27. Parcel numbering shall follow the TxDOT *ROW Manual*. Parcels are to be numbered based upon the parent tract. Developer shall revise parcel numbering due to subsequent transactions as in the following example: From a 50-acre parent tract, with a proposed Project ROW acquisition parcel identified as Parcel 14, a 5-acre tract is sold which will also require Project ROW acquisition. The result is, Parcel 14 is “Not Used”, and the two new Project ROW acquisition parcels are identified as Parcel 14A and 14B. If the property containing Parcel 14B sells a portion, then 14B is “Not Used” and the new Project ROW acquisition parcels are identified as Parcel 14C and 14D, etc. Developer shall not use the letter “E” to avoid confusion with easement designations. Parcel numbering shall be sensitive to the appraisal of the required parcels.
28. Complicated portions of a Project ROW acquisition survey can cause the Project ROW Map to be very difficult to read. TxDOT’s preferred solution is to create an additional Project ROW map sheet or sheets for details, curve data, general notes, etc. The primary page would still retain the whole property inset, record ownership data, and most of the usual information. The additional sheet(s) should be clearly referenced and be numbered as the next sequential page(s). Pages numbered with a letter added (for example: 6A, 6B) are for revisions and corrections. Developer shall use the preferred solution unless TxDOT approves an alternate method.
29. An ownership sheet or sheets, containing an index to the information for all the parcels, shall be included and located near the beginning of the Project ROW map, after the title sheet and control sheet. The ownership sheet index shall include the parcel numbers, the names of the property owners, the vesting deed recording information, the record area of the parent tract, the area of parcel(s) to be acquired, the area of the remainder(s) left and right, the beginning and ending stations of the parcel along the Project ROW line, and the sheet number in the Project ROW map where the parcel is located.
30. At property corners where more than one monument is found, a detail shall be provided to show the measured relationship between the monuments found and the monument set or held.
31. Developer shall purchase all materials, supplies and all items necessary for proper survey monumentation. Developer may purchase Type II monuments from TxDOT. TxDOT shall make available for pick-up by Developer Type II monuments within 75 days after TxDOT receives from Developer a written order, specifying the number of monuments to be purchased. Payment for TxDOT-supplied monuments shall be due within 30 days after TxDOT delivers to Developer a written invoice. Developer may use these monuments only for this Project and shall be responsible for proper storage thereof.
32. Developer at the request of the property owner or TxDOT shall re-stake the proposed ROW.

7.3.2 *Additional Reporting Requirements*

In addition to the Project ROW map, parcel description, and parcel plats, Developer shall provide the following reports and electronic files:

- Monthly Parcel Report: Developer shall provide a report, prior to the first of the month, listing all parcel deletions, parcel additions, and parcel splits.
- Monthly Progress Report: Developer shall provide a report of all survey activity that occurred over the previous month, including a two-week look ahead of anticipated survey activity.
- CAD Files: Developer shall provide digital CAD files in MicroStation format which includes: property lines and/or existing ROW lines, as surveyed; proposed ROW lines; parcel numbers; resource files; level assignments; and plot files. Developer shall submit CAD files prior to submitting the first Acquisition Package, and provide updates as needed.

7.3.3 *Title Services*

With respect to title services, Developer shall comply with the applicable standards identified in [Section 7.2.1](#), including the following requirements:

1. Select and contract with one or more title companies approved by TxDOT and deliver to TxDOT a five-year sales history, a preliminary title commitment or preliminary title report, and, if necessary or appropriate, copies of all underlying documents and a plot of all easements, including Existing Utility Property Interests, referenced therein for each parcel (including fee acquisitions, slope easements, other drainage and roadway ROW or easements and abandonment of utility easements) to be acquired by TxDOT for the Project. Each title report shall be dated not more than 180 Days prior to the date of submittal to TxDOT of the Acquisition Package for such parcel. Developer shall, at its own cost, review each title report to ensure that it complies with the format required by the CDA Documents. Developer shall, at its own cost, retain the services of a real estate attorney, licensed and located in the State of Texas, to be available for title support and acquisition assistance. All title reports must be in the following required format: clearly indicate which exclusions and exceptions shall be deleted upon acquisition of the subject parcel, and clearly indicate any required deliverables to the title company to clear identified exclusions and exceptions. Title reports shall be in accordance with Good Industry Practice. Developer shall notify the title company, by letter, which exceptions should be removed, including easements that (a) are appurtenant to and/or of benefit to the parcel but not included in the parcel to be acquired, and (b) are a burden on the parcel and not acceptable.
2. Review the preliminary title commitment or report to ensure that all current owners of record title are contacted and that negotiations or condemnation actions are conducted with all appropriate parties.
3. Work with the current owners of record title to each parcel or interest in a parcel or their designee and all other appropriate parties to clear any title exceptions or exclusions not acceptable to TxDOT.
4. Secure an owner's policy of title insurance in the amount of the total acquisition cost for each parcel from a title company acceptable to TxDOT for each parcel acquired, whether by deed or eminent domain judgment, insuring title as required by TxDOT. All Project ROW shall be acquired, and TxDOT's title in the Project ROW shall be insured, in fee simple absolute or easement interest as appropriate, free and clear of any and all liens and encumbrances. Developer shall pay the applicable title company for the cost of the title policies, including all endorsements thereto required by TxDOT. Title policies must be in a form and substance approved by TxDOT. Title to the Project ROW shall be insured in the name of the "State of Texas by and through the Texas Department of Transportation."

7.3.4 Introduction to Property Owners

Developer shall prepare and send out initial contact letters of introduction for both property owners and displacees. The letters shall clearly describe the Project, TxDOT's need for the owner's property, and shall include the name and telephone number of a Developer's representative. TxDOT's ROW Administrator or his/her designee will sign the letters on TxDOT letterhead. The forms for these letters shall be approved by TxDOT prior to use. Property owners or displacees unable to read or understand the notice must be given appropriate translation.

7.3.5 Appraisals

7.3.5.1 Appraisal Services

Developer shall provide TxDOT with fair market value appraisals prepared by appraisers meeting the minimum qualifications established herein. All appraisals shall be prepared in conformance with applicable law (including the Uniform Act), and in accordance with professional appraisal methods and applicable TxDOT standards for all parcels to be acquired by TxDOT. Developer shall:

1. Select appraisers from TxDOT's list of approved fee appraisers and meeting the requirements specified in Section 7.2.7 (ROW Personnel Qualifications). TxDOT shall have final approval of the selection of each appraiser and appraisal reviewers submitted by Developer. Developer must

- identify and receive written approval of the appraiser who will be responsible for the appraisal work product and who will be signing the reports.
2. Establish personal pre-appraisal contact with each owner of record title and each occupant, and document all contacts.
 3. If necessary, make a diligent effort to secure a written agreement between the record title owner and Developer granting TxDOT, Developer or assignees permission to enter the applicable parcel to be acquired (a "Right of Entry Agreement"). Developer may at its sole discretion and expense offer to pay reasonable compensation for any required Right of Entry Agreements. If Developer, after best efforts, is unable to secure a Right of Entry Agreement from the property owner, Developer shall provide documentation acceptable to TxDOT indicating conversations, correspondence, and efforts used to attempt to secure the Right of Entry Agreement.
 4. Contact the record title owners or their designated representatives, in writing, to offer them the opportunity to accompany the appraiser on the appraiser's inspection of the parcel, and maintain a record of all such contacts in the parcel file.
 5. Cause the appraiser to prepare a complete appraisal report for each parcel to be acquired to include the whole property, the portion to be acquired, and any damage to the remainder. It shall also include all improvements on the whole property, unless otherwise directed by TxDOT. The appraisal reports shall comply with and include all matters required by this section and TxDOT ROW related manuals, and shall satisfy the requirements of the USPAP in effect at the time the appraisal is submitted. Special analyses, studies or reports, as necessary, shall be made a part of each appraisal. The appraiser must use the most current edition of the standards referenced above and continually monitor these standards to ensure the appraisals conform to the most current requirements of professional appraisal practice. All appraisals shall utilize TxDOT Form ROW-A-5 - Real Estate Appraisal Report unless otherwise authorized by the TxDOT *Right of Way Manual* or TxDOT *Appraisal and Review Manual*; however, all appraisals for condemnation proceedings shall utilize TxDOT Form ROW-A-5 - Real Estate Appraisal Report.
 6. Obtain and provide TxDOT with copies of all written leases, licenses and other occupancy agreements, including outdoor advertising/sign agreements, in order to identify lessees, licensee and other occupants with potential compensable interests in each parcel and to determine the value of each such interest.
 7. Perform an evaluation of all outdoor advertising signs, as required, utilizing the appropriate forms as instructed by TxDOT.
 8. Cause the appraiser(s) to testify as an expert witness(es) or provide expert witness(es) approved by TxDOT in special commissioners' hearings or eminent domain proceedings through jury trial and be available for depositions, other discovery, pre-hearing or pre-trial meetings and appeals, as directed by TxDOT. Developer shall also provide administrative and/or technical support for such proceedings as requested by TxDOT.
 9. Coordinate with the review appraiser regarding corrections and/or additional information that may be required for a particular appraisal.
 10. Cause a report to be prepared by an environmental professional that meets ASTM E-1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, documenting the environmental condition of each parcel, which may be based on field investigations and/or historical review, as appropriate for the particular parcel. The report shall be completed in coordination with the appraiser(s) and shall be available to the appraiser(s). A Phase I environmental site assessment shall be performed for all properties. If it is determined that there is a potential environmental risk based on the Phase I report then a Phase II investigation shall be performed. A Phase III investigation shall be performed if the Phase II report justifies it. The Phase III report must indicate the approximate cost to remediate the parcel to achieve its current use and its highest and best use. Prepare timely written notification to TxDOT of any environmental or other concerns associated with the Project ROW or Additional Properties to be

- acquired that could require environmental remediation or other special attention or which would cause a report to be prepared.
11. Engage the services of, and cause, a land planner to perform, or otherwise assist in the preparation of, any and all appraisals that involve a parcel with a valuation analysis indicating a highest and best use that is other than the current use of such parcel, or as directed by TxDOT for certain other appraisals. Developer shall notify TxDOT in writing of each and every instance when the highest and best use of a parcel is different and TxDOT will determine to what degree land planner services will be utilized by Developer.
 12. Cause the appraiser(s) to prepare updated appraisals, as well as updated appraisal reviews, when required by TxDOT or as needed during eminent domain proceedings. An updated appraisal package shall comply with USPAP, specifically the Statement on Appraisal Standards No. 7 (SMT-7) and Advisory Opinion, AO-3. The term “Update of an Appraisal” is defined as “an extension of a complete or limited appraisal and report relied on by a client for a prior business decision.” At a minimum, the updated appraisal report must include:
 - A letter of transmittal with a specific reference to the original appraisal report, any changes in market conditions, since the original appraisal, any changes in the subject property since the original appraisal, a statement of the current value or extension of the original value opinion and the listing of the current date of value.
 - An updated Page 1 from TxDOT Form ROW-A-5 – Real Estate Appraisal Report or Form ROW-A-6 – Real Estate Appraisal Report, as appropriate, with the current date of a recent inspection of the subject property and a current date of value. This form needs to have a current signature and date by both the appraiser and the reviewing appraiser in the appropriate spaces on the form.
 - Any qualifying and limiting conditions or general assumptions by the appraiser shall be clearly stated and attached.
 - A copy of the survey and legal description of the property being acquired, current photographs of the subject property, clearly showing the area being acquired, even though the original appraisal report contained photographs of the subject and the area of the acquisition. If there are significant changes to the subject property, the area being acquired, access to the remainder property, damages to the remainder(s), market conditions, the subject property’s highest and best use from the previous appraisal or significant changes in the approaches to value, the property shall be reappraised using either TxDOT Form ROW-A-5 – Real Estate Appraisal Report, or, when approved by TxDOT, TxDOT Form ROW-A-6 – Real Estate Appraisal Report, depending on the report used for the original appraisal. Appraisers shall refer to Sections 6.03 and 6.04 of the TxDOT *Appraisal & Review Manual* for additional guidance. Developer shall follow these guidelines in producing updated appraisal reports and shall discuss specific updating requirements for any complex appraisals with TxDOT before beginning the assignment.
 13. Prepare and deliver to TxDOT upon request, a copy of all file documents, as formally requested in discovery motions or request for production.
 14. Complete and furnish, to the appraiser, TxDOT Form ROW-A-9 - Property Classification Agreement before appraisal is completed.

7.3.5.2 Appraisal Review

In connection with appraisal review, Developer shall:

1. Select review appraisers from TxDOT's list of approved fee appraisers and meeting the requirements of Section 7.2.7. The review appraiser selected must follow the appraisal guidelines and procedures found in Chapter 4 of the TxDOT Appraisal & Review Manual.
2. Determine, in consultation with TxDOT, if additional appraisal reports or technical expert reports are required. Initiate, review, and reconcile each report required.

3. Review all appraisal reports for each parcel to determine consistency of methodology, supporting documentation related to the conclusion reached, and compliance with TxDOT standards, as defined in Section 7.3.5.1 (Appraisal Services) and this Section 7.3.5.2 (Appraisal Review), the TxDOT *Appraisal & Review Manual*, the Uniform Standards and Federal Land Acquisitions and the requirements of the Appraisal Foundation's USPAP in effect at the time the appraisal is reviewed. The review appraiser must use the most current edition of the standards referenced above and continually monitor these standards to ensure the appraisals conform to the most current requirement of professional appraisal practice.
4. Inspect the subject properties and the sale properties used in direct comparison for each appraisal being reviewed.
5. Upon completion of the review outlined above, the appraiser shall certify in writing to TxDOT that all required standards have been met. This certification will occur by signing on Page 1 of each TxDOT Form ROW-A-5 (Real Estate Appraisal Report) or TxDOT Form ROW-A-6 (Real Estate Appraisal Report) in the block provided. The review appraiser will also complete TxDOT Form ROW-A-10 (Tabulations of Value) to accompany each appraisal.
6. For appraisal updates, the review appraiser shall perform a complete review of the updated appraisal, re-inspecting the subject property and the sales used, as of the current date of value. The review appraiser shall follow the procedures outlined in the TxDOT *Appraisal and Review Manual*. A new TxDOT Form ROW-A-10 - Tabulations of Value will be required for each updated appraisal ordered by Developer.

7.3.6 Project ROW Acquisition Package Approval

Acquisition Packages submitted by Developer for TxDOT's approval shall include the following items, prepared for each parcel in accordance with the requirements of this section:

1. A cover sheet setting forth the following information for each parcel.
 - Parcel number and number of parts
 - Station number
 - CSJ number
 - Location of parcel
 - Name of owner
 - County and/or other jurisdiction
 - Extent of acquisition (partial or whole acquisition)
 - Type of conveyance (fee, easement, etc.)
2. A complete legal description of the parcel adequate to effect the desired acquisition of the parcel, signed and sealed by an RPLS. A legal description and parcel plat is required for each parcel. Control of access shall be addressed in all legal descriptions. All descriptions shall be in recordable form and shall be prepared in a form and manner acceptable to TxDOT in all respects.
3. The parcel plat, as prepared by the RPLS, and a half size (11" x 17") copy of the ROW map sheet(s) pertaining to the parcel, such plat to include control of access designations.
4. A title report, current within 180 Days, including copies of all documents identified in the exceptions listed therein and a plot of all easements identified therein. The Acquisition Package shall include Developer's analysis of each preliminary title report or title commitment to determine potential problems and proposed methods to cure title deficiencies. Developer shall perform title curative Work. Developer shall provide TxDOT with copies of all curative documents.
5. A copy of the appraisal report and all supporting documentation.
6. A copy of the environmental site assessment and all amendments as described in Section 7.3.5.1 (Appraisal Services).

7. A real/personal property report detailing what items making up each parcel are classified as real estate, tenant-owned improvements or personal property. Particular attention shall be paid to items that have questionable classifications. A completed TxDOT Form ROW-A-9 (Property Classification Agreement).
8. Replacement Housing Calculations, notification of business eligibility, completed displacee interviews, all comparables used in estimating the Replacement Housing Calculations, and letter to displacee(s) explaining Replacement Housing Calculations. Calculations and replacement housing benefit package shall be prepared and reviewed by a qualified consultant, in conformance with TxDOT's standard relocation procedures and applicable to State and federal laws and regulations.
9. The proposed initial offer letter, memorandum of agreement, deed, and any other documents, which shall be prepared by Developer as required or requested by TxDOT, on Developer's letterhead or as otherwise directed. TxDOT will provide the format for preparing these documents. Documents referred to in this section are standardized by TxDOT and modification of standardized documents shall be kept to a minimum. All changes are subject to approval by TxDOT in writing, in TxDOT's sole discretion.
10. Any other required TxDOT forms, such as record of all contacts with the property owner or any party with a compensable interest.

No Acquisition Packages will be approved if performed or submitted by appraisers or agents not previously approved by TxDOT for this Project.

Upon TxDOT's prior written approval of the Acquisition Package, Developer may proceed with the offer to the property owner.

7.4 Acquisition Activities

7.4.1 ROW Negotiations

Developer shall conduct all negotiations in accordance with the requirements of applicable Law. In conjunction with negotiations, Developer shall:

1. Within ten Business Days of TxDOT's approval of the Acquisition Package, contact each property owner or owner's designated representative, in person where practical, to present the offer and deliver an appraisal report (not more than 6 months old) and appropriate brochures. A copy of the appraisal report for the subject property shall be provided to the property owner or authorized representative at the time of offer. Developer shall also maintain a file record of receipt of appraisal signed by the property owner. Developer shall also maintain follow-up contacts and secure the necessary documentation and title curative Work upon acceptance of the purchase offer.
2. At the time of offer, produce and distribute to all property owners and displacees, TxDOT- approved informational brochures, as appropriate. The ROW brochures shall be purchased by Developer and shall include language about the use of the Declaration of Taking Procedure if Developer anticipates requesting the utilization of this procedure by TxDOT anywhere within the Project.
3. Identify lessees, licensees, occupants, or other parties with potential compensable interests including outdoor advertising sign owners, and, if appropriate, after consultation with TxDOT, negotiate with such parties for the acquisition of their compensable interests.
4. Advise the property owners, lessee, licensees, occupants, and other holders of compensable interests, as applicable, of the administrative settlement process. Confer with and transmit to TxDOT's ROW Administrator any settlement request from property owners, lessees, licensees, occupants, or other holders of any compensable interest, as applicable, including a detailed recommendation from Developer in accordance with standards, manuals and procedures as defined in Section 7.2. Developer and TxDOT shall jointly determine whether to accept a

- settlement request. Delivery of the administrative settlement request and Developer's recommendation to TxDOT must occur within five Business Days of Developer's receipt of the administrative settlement request.
5. Developer, at its request or the request by TxDOT and/or the TxDOT Administrative Settlement Committee, may participate in the evaluation of the administrative settlement request and attend the committee meeting.
 6. Developer shall provide a letter with the Administrative Settlement Committee's response to the property owner, lessee, licensee, occupant, or other holder of a compensable interest, as applicable. Developer shall deliver all settlement responses (if within reasonable proximity of the Project) by hand within three Business Days after receipt. If this delivery method is not feasible, Developer shall mail (return receipt requested) response letters not more than three Business Days following any decision by the TxDOT Administrative Settlement Committee. If Developer selects the mailing option, Developer shall make a telephone call to the property owner to discuss the settlement offer prior to mailing the response letter. The TxDOT ROW Administrator, on an as-needed basis, will convene the TxDOT Administrative Settlement Committee.
 7. Notwithstanding an unsuccessful completion of the formal administrative settlement process, Developer may, in its sole discretion, engage in ongoing negotiations with the owners of compensable interests. Developer shall develop and incorporate in its ROW Acquisition Plan a procedure for these negotiated settlements. Said negotiations may continue until such time as the Texas Transportation Commission adopts a minute order authorizing the filing of a condemnation petition. Developer shall submit to TxDOT its recommendation of a negotiated settlement and obtain TxDOT's consent prior to acceptance of any settlement.
 8. Provide timely (i.e., not more than ten Business Days after inquiry) response to the verbal or written inquiries of any property owner, lessee, licensee, occupant or other holder of a compensable interest, as applicable.
 9. Prepare a separate negotiator contact report for each meeting or conversation with any person (or their appointed representative(s) supported by a written confirmation of appointment) who has a compensable interest in each parcel on TxDOT Form ROW-N-94 – Negotiator's Report. Contact reports shall also be prepared for unsuccessful attempts to contact such persons.
 10. Maintain a complete parcel file for each parcel. All original documentation related to the purchase of the real property interests will be maintained (housed separately from the relocation files) in conformance with TxDOT standards, manuals, and procedures, as defined in Section 7.2. All original ROW documents must be retained and properly secured in Developer's Project office or as otherwise approved by TxDOT. Signed original documents shall be periodically forwarded to TxDOT with a transmittal form during the acquisition process; provided, however, that all remaining original documents shall be forwarded upon completion of the acquisition of Project ROW for the Project.
 11. Prepare and deliver documents of conveyance (including bisection clause and access clause, if applicable) to the property owner, lessee, licensee, occupant, or other holder of any compensable interest, as applicable, and obtain their execution of the same. All signatures on documents to be recorded shall be notarized in accordance with Texas law.
 12. Pursue and obtain Possession and Use Agreements (PUA) concurrently with the parcel negotiations. The form of PUA will be provided by TxDOT and will contain provisions allowing for construction to commence while negotiations are finalized. Such agreements will be sought and negotiated by Developer strictly in accordance with the Law and only with the prior written consent of TxDOT. If Developer exercises the use of a TxDOT PUA, Developer must obtain a deed or commence action on condemnation proceedings by forwarding a condemnation packet to TxDOT for approval within six months from the date of the PUA.
 13. Be open to all reasonable settlement requests (that comply with the regulations as outlined in this section) from the property owners, which are feasible and help expedite the

Project ROW acquisition process. Developer acknowledges and understands that TxDOT encourages all positive and creative solutions which satisfy the property owner and promote the success of the Project.

14. Developer shall prepare and deliver a final offer letter to the property owners, lessees, licensees, occupants, or other holders of any compensable interest, as applicable. The letter shall be on Developer's letterhead and shall be signed by the ROW Acquisition Manager. Developer shall submit to TxDOT, a copy of the final offer letter within two days after delivery to the property owner.
15. If the offer is not accepted, Developer shall follow the procedures established for condemnation.

7.4.2 Relocation Assistance

Developer shall coordinate and perform the administrative requirements necessary to relocate any occupants from Project ROW. All Work prepared by Developer with respect to relocation assistance shall be performed in accordance with applicable Law, including the Uniform Act and TxDOT standards, and in accordance with all provisions of this Agreement.

Developer shall maintain a relocation office (meeting ADA requirements) within reasonable proximity of the Project area as approved by TxDOT. At a minimum, the office hours of the relocation office shall be posted to meet the following timetables:

- Monday thru Friday: 8:00 am to 5:00 pm
- Saturday: 9:00 am to 12:00 pm
- Sunday: office shall be closed

In addition to the office hours listed above, Developer shall be available to all displacees for relocation services at the convenience of the displacees.

Developer's major activities with respect to the relocation assistance of occupants from Project ROW include:

1. Prepare a Relocation Plan in accordance with the TxDOT *Right of Way Manual*, Volume 3, Chapter 8 (Relocation Program Planning and Construction).
2. Monitor relocation assistance activities.
3. Prevent fraud, waste and mismanagement.
4. Assist with all requests and be responsible for carrying out decisions made by TxDOT, the review/appeal process and judicial reviews.

Developer shall provide relocation assistance strictly in accordance with the Law, and, in particular, the Uniform Act and TxDOT standards. With respect to relocation assistance, Developer shall:

1. Provide written notice to all property owners, lessees, licensees, occupants, other holders of compensable interests, and other potential displacees regarding relocation assistance and produce and provide them with a relocation assistance brochure that has been approved by TxDOT. Developer shall perform relocation interviews, complete and maintain interview forms and discuss general eligibility requirements, programs, and services with potential displacees. Developer shall maintain a written record of all verbal contacts.
2. Give written notice of the pending acquisition to any non-eligible occupants. Any questions as to the eligibility of a potential displacee shall be directed in writing to TxDOT's ROW Administrator.
3. Contact and provide relocation assistance to those parties affected by the Project ROW acquisition and complete forms for all displacees, as required.
4. Locate, evaluate and maintain files on comparable available housing, commercial, retail, and industrial sites.
5. Calculate replacement supplement benefits.

6. Compute and submit requests for relocation rental/housing supplement to TxDOT prior to submission to relocatees. All relocation supplements shall be subject to TxDOT's written approval.
7. Perform a Decent, Safe and Sanitary (DSS) inspection for each replacement housing comparable, photograph the comparable and complete the DSS inspection form, TxDOT Form ROW-R-116 - Replacement Housing Inspection.
8. Request at least three moving estimates from moving companies to effect relocation of personal property.
9. Prepare moving plan with appropriate photos, sketches and inventory of personal property to be moved.
10. Coordinate moves with displacees and moving companies in accordance with TxDOT standards and the Uniform Relocation Act.
11. Maintain relocation contact logs on a TxDOT Form ROW-R-96-R – Relocation Advisory Assistance – Parcel Record.
12. Attend all closings on replacement properties, if requested by any party involved, and assure supplemental payments, if any, are properly distributed.
13. Process and compute increased interest payments on the mortgage of owner-occupied dwellings, as required.
14. Deliver to displacees a 90 Day notice of eligibility letter simultaneous with the delivery of the relocation benefits package. Deliver a 90 Day letter to displacees with the location of the comparable property used to compute the supplement.
15. Deliver a 30 Day notice to displacees and property owners upon acquisition of Project ROW.
16. Notify TxDOT's ROW Administrator office immediately if a displacee has not moved after 30 Day notice expires. Prepare a written recommendation to facilitate the displacee's move.
17. Be available for any appeals or hearings.
18. Prepare relocation payment claim submissions for all displacees and all relocation assistance benefits.
19. Verify DSS dwelling criteria on all replacement housing as selected by the displacees.
20. Secure dwellings and structures no later than ten Days after vacancy and protect the Project ROW following acquisition and relocation.
21. Maintain a complete file, separate from acquisition files, on each displacee and make available for inspection.
22. Be responsible for all relocation activities that may occur after deposit of the special commissioner's award in the courts, including instances when a parcel referred to the Attorney General's office for eminent domain also has a relocation issue.
23. Prepare all correspondence to the displacees or their representative(s) on Developer's designated relocation letterhead and have Developer's correspondence signed by the Project ROW relocation specialist.
24. Deliver to each displacee the relocation assistance payments according to the TxDOT Right of Way Separation of Duties chart provided.
25. Assist the Attorney General's office with eviction proceedings. Serve notice of eviction proceedings to the occupant(s) of the property who have not complied with move dates. Coordinate the eviction process with the local authorities and accompany the Sheriffs Department when the local authorities are carrying out eviction.

7.4.3 Closing Services

For purposes of closing services, Developer shall:

1. Prepare the escrow agreement and closing documents, including a closing memorandum identifying all parties involved in the closing, and listing all documents to be executed and/or delivered in connection with the closing.

2. Attend closings; provide curative documents and exhibits as required and in conjunction with the applicable title company. Confirm that all conditions to closing are satisfied and notify TxDOT of all closing appointments.
3. Coordinate with TxDOT and the applicable title company to obtain an updated title commitment within 24 hours prior to closing and then obtain an issued title policy based on the approved updated title commitment within 30 Days following closing and transmit the same to TxDOT.
4. Obtain and deliver to TxDOT one certified copy of each instrument of conveyance immediately after closing, and provide a copy of the title policy to TxDOT within five Business Days after receipt. Cause to be delivered to TxDOT a copy of the recorded deed within ten Days after the title company receives the recorded deed.

7.4.4 Condemnation Support

Developer shall support condemnation efforts as directed by TxDOT and further delineated as follows:

1. Notify TxDOT of any potential condemnation and document the reason(s) for condemnation including recommendations for property closure.
2. Conduct all applicable eminent domain-condemnation activities in accordance with the policies and procedures as described in the TxDOT *Right of Way Manual*, Volume 4: "Eminent Domain "; in the TxDOT *Appraisal and Review Manual*, Chapter 6 "Eminent Domain-State Acquisition" or as revised; and in Chapter 21, Texas Property Code.
3. After non-response or upon receipt of a copy of the rejected final offer from a property owner or other property right holder entitled to compensation, request an updated title report from the title company issuing the original title commitment.
4. Provide to TxDOT, within ten Days following non-response or rejected certified mailing, notification thereof together with a signed and sealed parcel description and parcel plat, and a bisection clause and access clause, if necessary, with the clauses attached to a property exhibit containing the parcel description and parcel plat.
5. Use the information from the title report to join all parties having a property interest on applicable the TxDOT form. Spouses of property holders with compensable rights must also be joined.
6. Upon completion of TxDOT Form ROW-E-49 – Request for Eminent Domain Proceedings, prepare a condemnation packet containing two copies each of the following documents: the completed TxDOT form, negotiation logs, the updated title report not more than 90 Days old, appraisal receipt acknowledgment, pre-appraisal contact sheet, signed and sealed field notes, parcel sketch, bisection clause and access clause exhibits (if necessary), final offer letter reflecting latest appraisal, complete minute order request form (form to be provided by TxDOT), any correspondence sent by Developer or from the owner of the compensable interest or representatives, one copy of the appraisal report not more than 90 Days old, and proof of good faith negotiations. Submit two complete condemnation packets to TxDOT's ROW Administrator.
7. Send a copy of the complete petition to the title company and confirm with the title company that the appropriate parties were joined in the case and that no changes in title have occurred since the original litigation guaranty was issued.
8. File the petition for condemnation with the appropriate court clerk after a determination that a timely settlement is not feasible.
9. Coordinate and provide legal and technical support to the Attorney General's office, as required to facilitate filing the petition, assignment of a court, and setting of a hearing date.
10. Make available to TxDOT on behalf of the Attorney General's office an agent who will be expected to assist in making arrangements for conferences with witnesses prior to trial, filing the condemnation petition, informing the Attorney General's office as to the filing date of the petition and the case number assigned to the suit, and perform any other duties which will assist in the successful prosecution of the suit, including his or her attendance in court and filing necessary documents to complete all eminent domain proceedings.

11. Depending on the market conditions or if over six months have elapsed since the date of the initial offer, contact the attorney handling the case for TxDOT and confer about the advisability of preparing an updated appraisal. If it is determined that an updated or new appraisal is necessary or desirable, obtain such appraisal using the same procedures as described in Section 7.3.5.1 (Appraisal Services) above. Developer must also undertake appraisal review as described in Section 7.3.5.2 (Appraisal Review).
12. Coordinate with TxDOT on behalf of the Attorney General as to land planners and/or other expert witnesses as required by the Attorney General. Developer, at its cost, shall provide the land planner or other expert at the request of TxDOT or the Attorney General. The land planner or other expert report, if required, shall be completed and forwarded to the appraiser before the updated appraisal is completed.
13. Appear or provide for the appearance of expert witness(es) or fact witness(es) when requested by TxDOT or the Attorney General's Office. The appearances may include pre-commissioner's hearing preparations, special commissioner's hearings, and subsequent proceedings including jury trials and related proceedings.
14. Submit the updated appraisal to TxDOT and the attorney handling the case for TxDOT for review and approval, which review and approval shall occur within ten Business Days of receiving the updated appraisal. TxDOT and Developer must approve any revised offer in writing prior to an offer letter being sent. If a revised offer is approved, prepare a final offer letter, make the revised offer to the property owner or other holder of a compensable interest, as applicable, and submit a copy of the final offer letter to TxDOT for written approval.
15. Communicate with TxDOT as to the parcel status on a monthly basis and in the Project progress report or as requested by TxDOT.
16. Serve in person, a "Notice of Hearing" at least 11 Days prior to the date of the special commissioners' hearing or other hearings and notice requirements as directed or authorized by the court.
17. Call and send reminders letter two to three weeks in advance of any hearing to the assigned attorney, engineer, technical experts, appraiser, the commissioners, court reporter, and TxDOT's ROW Administrator concerning hearing dates.
18. Upon completion of the hearing, prepare TxDOT Form ROW-E-73 – Data Sheet – Special Commissioners Hearing and commissioners' time sheets. Developer shall make payment to all commissioners involved in the hearing and include payment for commissioners as part of general Project ROW services.
19. Coordinate and provide support to TxDOT's counsel and facilitate distribution of copies of award, prepare request for payment, and file notice of deposit. Developer shall coordinate with TxDOT on behalf of the Office of the Attorney General regarding expert witnesses needed to testify on behalf of the State at the special commissioners' hearing and subsequent proceedings including jury trials. At the request of the Office of the Attorney General or TxDOT, Developer shall provide and pay for all necessary expert witnesses including: engineering, land planners, real estate consultants, cost estimators, outdoor advertising sign experts and environmental consultants and Developer shall appear as expert witness or fact witness, as requested. Developer shall also make any Contractors available to appear as an expert witness or fact witness, as requested at the special commissioners' hearing or subsequent proceedings. The selection of all expert witnesses to be used for jury trials shall be determined by the Attorney General's Office.
20. Schedule and pay for all court reporter services, transcription costs, expert witness fees, exhibits, and exhibit workbooks as directed by TxDOT. All documents and exhibits used in the special commissioner's hearings shall be submitted to TxDOT within 20 Days after completion of such hearing.
21. Be responsible for coordinating the pre-hearing meeting with TxDOT on behalf of the Attorney General's office and all others required for testimony or exhibit preparation.

22. Timely file and provide proper service of objections if requested by TxDOT after completion of the special commissioner's hearing and promptly provide evidence of filing and copies of all filed documents to TxDOT. Within three days after objections have been filed, Developer, at its cost, shall order transcripts of such hearing.

7.4.5 Clearance/Demolition of Project ROW

Prior to demolition of any improvements, Developer shall provide to TxDOT, photographs of the property and all improvements, unless the special commissioner's hearing has been completed and objections have not been filed. Developer shall also have photos of personalty and any other items of dispute in and of a quality suitable for presentation as evidence in court. Following acquisition or possession of any parcel of Project ROW, Developer shall:

1. Secure and protect the buildings, improvements and fixtures on the Project ROW until they are disposed of or demolished. Developer shall board-up, mow, and winterize as required by TxDOT or applicable Law.
2. Coordinate with the owner and occupants to assure the clearance of personal property from the Project ROW, as applicable.
3. Provide for any insect and rodent control and initiate extermination as required to protect the adjacent properties and rid the Project ROW from infestations.
4. Secure Governmental Approvals required for demolition and environmental surveys or tests, and notify TxDOT in writing of all such activities.
5. To the extent required by Section 7.2.11 (Developer Responsibility for Costs), prepare necessary documentation for disposal of improvements, fixtures and buildings in accordance with applicable Laws and submit the same to TxDOT.
6. Provide written notification to TxDOT of any real and/or personal property remaining on the Project ROW after vacated by the occupants and not acquired as part of the acquisition.
7. Terminate all utility service(s) when appropriate.
8. Process all required forms, documents and permit applications in order to proceed with the timely demolition or removal of any and all improvements, buildings and fixtures located within the Project ROW, as applicable.
9. Demolish and/or remove all improvements.
10. Notify TxDOT upon completion of the demolition and clearance of the Project ROW, as applicable.

7.4.6 Property Fence

In connection with fences, Developer shall comply with the policies and procedures of the TxDOT *Right of Way Manual*, as well as the specifications found in the current TxDOT *Standard Specifications for Construction of Highways, Streets and Bridges*. Fencing standards for Developer-provided fencing shall conform to the overall aesthetics requirements found elsewhere in these CDA Documents and referenced standards.

7.4.6.1 Property Fencing for Public Properties

Where public facilities now exist that are in high risk areas for public use (particularly those containing parks, sport areas, schools or any highly traveled pedestrian areas), Developer shall, at a minimum, construct a 6-foot-high chain-link fence with metal posts. Developer shall use Good Industry Practice in fencing public properties to control public access to the Project.

7.4.6.2 Property Fencing for Private Properties

Developer shall instruct the appraiser to use the "Cost to Cure" format to compensate an owner of private property for a replacement fence when the Project ROW line leaves one or more unfenced remainder property(s) that were fenced before the taking. Compensation for the new fencing will be based upon the same type of fence as the property owner's existing fence.

When the property owner is paid through the appraisal process for the cost to rebuild the fence on the remainder property, Developer shall include in the memorandum of agreement or the purchase agreement for such property the following clause:

"It is further understood and agreed that the Grantor has been compensated for the construction of a new fence and shall be responsible for constructing the necessary fencing within 30 Days from the date of closing. Grantor specifically understands and agrees that the fences are the property of the Grantor and they shall be liable and responsible for any reconstruction, maintenance, or adjustment with regard to such fencing."

Developer shall make reasonable and good faith efforts to ensure that the property owners, who have been compensated for fencing of the remainder properties, erect the fence in accordance with the construction schedule.

If necessary to maintain the Project construction schedule and to control unauthorized access to the Project ROW by the public or livestock, Developer shall be responsible for providing temporary fencing in cases where the property owner refuses to fence the property within the allotted timeframe.

After the property owner's retention period has expired and if any existing fencing remains, Developer shall remove the existing fences from the newly acquired Project ROW and will be responsible for all costs associated therewith.

7.5 Early ROW Acquisition

TxDOT shall notify the Developer if certain Project ROW parcels are scheduled to be acquired by Governmental Entities prior to issuance of the NTP. The Developer will be updated regularly on the status of the acquisition process for each parcel.

After NTP, Developer shall be responsible for coordinating the scheduling of any remaining early Project ROW acquisition by other Government entities with the Project Schedule. Based on the status of each parcel, TxDOT may require the Developer to complete the acquisition of certain parcels.

8 GEOTECHNICAL

8.1 General Requirements

Developer shall perform all geotechnical investigations, testing, research, and analysis necessary to effectively determine and understand the existing surface and subsurface geotechnical conditions of the Project ROW to be used by Developer to carry out the Work. Developer shall ensure the geotechnical investigations and analyses are both thorough and complete, so as to provide accurate information for the design of roadways, pavements, foundations, structures, and other facilities that result in a Project that is safe, and meets operational standards and Handback Requirements.

8.2 Design Requirements

8.2.1 *Subsurface Geotechnical Investigation by Developer*

Developer shall determine the specific locations, frequency, and scope of all subsurface geotechnical investigations, testing, research, and analysis Developer considers necessary to provide a safe and reliable roadway, pavement, foundation, structure, and other facilities for the Project.

Developer shall prepare and amend, as needed, Geotechnical Engineering Reports documenting the assumptions, conditions, and results of the geotechnical investigation and analysis, including the following:

- The geology of the Project area, including soil and/or rock types
- Field investigations and laboratory test results used to characterize conditions, including moisture content, plasticity index, gradations for each major soil strata change, levels of shrink/swell potential, and levels of sulfate (on-site and borrow)
- A discussion of conditions and results with reference to specific locations on the Project
- Design and construction parameters resulting from the geotechnical investigation and analysis, including parameters for the design of pavements, pipes, structures, slopes, and embankments
- Plan view locations of field sampling, boring logs and other field data, laboratory test results, calculations, and analyses that support design decisions

Each Geotechnical Engineering Report, upon completion, shall be submitted to TxDOT for review and comment.

If environmentally-sensitive conditions are encountered during the subsurface exploration activities, Developer shall undertake appropriate actions in accordance with Section 4 (Environmental).

8.2.2 *Pavement Design*

Developer shall design, construct, and maintain roadway pavements using Good Industry Practice and the subsurface geotechnical data collected by Developer. Roadway pavements shall meet the operation standards and requirements contained in Sections 19 (Maintenance) and 22 (Operations).

Developer shall prepare a pavement design report for record that documents the assumptions, considerations, and decisions contributing to Developer's pavement design, including the following:

- Pavement design details by location, including structural layer materials, general specifications, and thicknesses
- Lifecycle management analysis, including the periods for resurfacing, reconstruction, and other rehabilitation measures and what these activities are likely to entail
- Relevant pavement evaluation data (structural and functional) and condition information on adjacent roads
- Site conditions

- Relevant geotechnical data and drainage requirements
- Design criteria used in determining the pavement design(s), including traffic loads, pavement material strength factors, and pavement design life
- Design methods adopted in developing the pavement design(s) and the rationale for their selection
- Other considerations used in developing the pavement design(s)
- The pavement for main lanes and ramps shall be designed using the functional highway classification(s) defined in Book 2

For roadways adjacent to and crossing the Project that are disturbed by the construction activities of the Project, Developer shall, at a minimum, match the in-place surface type and structure of the existing roadways. Developer shall design all tie-in work to avoid differential settlement between the existing and new surfaces.

9 LAND SURVEYING

9.1 General Requirements

Developer shall provide accurate and consistent land surveying and mapping necessary to support ROW acquisition, design, and construction of the Project.

Developer shall review existing survey data and determine the requirements for updating or extending the existing survey and mapping data. Developer is responsible for the final precision, accuracy, and comprehensiveness of all survey and mapping.

9.2 Administrative Requirements

9.2.1 *Right-of-Entry*

Developer shall secure written permission prior to entering any private property outside the ROW. It shall be Developers' sole responsibility to negotiate this permission and Developer shall be responsible for any and all damages and claims resulting from that ingress. Proper documentation of right-of-entry shall be maintained at all times by Developer.

9.3 Design Requirements

9.3.1 *Units*

All survey Work shall be performed in the U.S customary units system of measurement.

9.3.2 *Survey Control Requirements*

Developer shall ensure that all surveying conforms to all applicable surveying laws and the Professional Land Surveying Practices Act and must follow the *General Rules of Procedures and Practices* of the Texas Board of Professional Land Surveying. Developer shall ensure that any person in charge of a survey field party is proficient in the technical aspects of surveying.

Developer shall base all additional horizontal and vertical control on the Level 2 and Level 3 control provided by TxDOT.

Developer shall establish and maintain additional survey control as needed and final ROW monumentation throughout the duration of the Project.

Developer shall tie any additional horizontal and vertical control for the Project to the TxDOT-supplied Primary (Level 2) or Secondary (Level 3) control network. If Developer chooses to use GPS methods, Developer shall meet the accuracy of the appropriate level of survey as defined in the TxDOT *GPS User's Manual*.

All survey control points shall be set and/or verified by a Registered Professional Land Surveyor licensed in the State of Texas.

9.3.3 *Conventional Method (Horizontal & Vertical)*

If Developer chooses to use conventional methods to establish additional horizontal control, Developer shall meet the accuracy of the appropriate level of survey as defined in the following tables.

9.3.3.1 Horizontal Accuracy Requirements for Conventional Surveys

Horizontal control is to be established (at a minimum) on the Texas State Plane Coordinate System NAD 83.

	Level 3	Level 4	Remarks and Formulae
Error of Closure	1: 50,000	1:20,000	Loop or between monuments
Allowable Angular Closure	$\pm 3'' \sqrt{N}$	$\pm 8'' \sqrt{N}$	N = number of angles in traverse
Accuracy of Bearing in Relation to Course *	$\pm 04''$	$\pm 10''$	Maximum for any course
Linear Distance Accuracy (Minimum Length of Line)	1: 50,000 (2,500 feet)	1: 20,000 (1,000 feet)	
Positional Tolerance of Any Monument	$AC/50,000$	$AC/20,000$	AC = length of any course in traverse
Adjusted Mathematical Closure of Survey (No Less Than)	1:200,000	1:200,000	

* TxDOT policy requires all bearings or angles be based on the following source: Grid bearing of the Texas Coordinate System of 1983, with the proper zone and epoch specified.

9.3.3.2 Vertical Accuracy Requirements for Conventional Surveys

Vertical control shall be established (at a minimum) on the North American Vertical Datum of 1988 (NAVD 1988).

	1st ORDER	2nd ORDER	3rd ORDER	REMARKS AND FORMULAE
Error of Closure	0.013 feet \sqrt{K}	0.026 feet \sqrt{K}	0.039 feet \sqrt{K}	Loop or between control monuments
Maximum Length of Sight	250 feet	300 feet		With good atmospheric conditions
Difference in Foresight and Backsight Distances	± 10 feet	± 20 feet	± 30 feet	Per instrument set up
Total Difference in Foresight and Backsight Distances	± 20 feet per second	± 50 feet per second	± 70 feet per second	Per total section or loop

Recommended Length of Section or Loop	2.0 miles	3.0 miles	4.0 miles	Maximum distance before closing or in loop
Maximum Recommended Distance Between Benchmarks	2000 feet	2500 feet	3000 feet	Permanent or temporary benchmarks set or observed along the route
Level Rod Reading	± 0.001 foot	± 0.001 foot	± 0.001 foot	
Recommended Instruments and Leveling Rods	Automatic or tilting w/ parallel plate micrometer precise rods	Automatic or tilting w/ optical micrometer precise rods	Automatic or quality spirit standard, quality rod	When two or more level rods are used, they should be identically matched
Principal Uses	Broad area control, subsidence or motion studies jig & tool settings	Broad area control, engineering projects basis for subsequent level work	Small area control, drainage studies, some construction and engineering	

9.3.4 Right of Way Surveys

Developer shall base all surveys on the horizontal and vertical control network provided by TxDOT.

9.3.4.1 Accuracy Standard

In performing right of way surveys consisting of boundary locations, Developer shall meet the accuracy standards of the appropriate level of survey as defined in the following table.

CHART OF TOLERANCES

	URBAN / RURAL	URBAN BUSINESS DISTRICT	REMARKS AND FORMULAE
Error of Closure	1:10,000	1:15,000	Loop or between Control Monuments
Angular Closure	15" \sqrt{N}	10" \sqrt{N}	N = Number of Angles in Traverse
Accuracy of Bearing in Relation to Source *	20 "	15 "	$\text{Sin } \alpha$ = denominator in error of closure divided into 1 (approx.)
Linear Distance Accuracy	0.1 foot per 1,000 feet	0.05 foot per 1,000 feet	$\text{Sin } \alpha \times 1000$ (approx.) where \pm = Accuracy of Bearing
Positional Error of any Monument	$AC/10,000$	$AC/15,000$	AC = length of any course in traverse

Adjusted Mathematical Closure of Survey (No Less Than)	1:50,000	1:50,000	
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* TxDOT policy requires all bearings or angles be based on the following source: Grid bearing of the Texas Coordinate System of 1983, with the proper zone and epoch specified.

9.3.5 Survey Records and Reports

Developer may use an electronic field book to collect and store raw data. Developer shall preserve original raw data and document any changes or corrections made to field data, such as station name, height of instrument, or target. Developer shall also preserve raw and corrected field data in hardcopy output forms in a similar manner to conventional field book preservation.

Field survey data and sketches that cannot be efficiently recorded in the electronic field book shall be recorded in a field notebook and stored with copies of the electronic data.

All field notes shall be recorded in a permanently bound book. (Loose leaf field notes will not be allowed.) Developer shall deliver copies of any or all field notebooks to TxDOT upon request.

9.4 Construction Requirements

9.4.1 Units

Comply with Design Requirements.

9.4.2 Construction Surveys

Comply with Design Requirements.

9.5 Deliverables

9.5.1 Final ROW Surveying and Mapping

Developer shall coordinate with TxDOT regarding the assignment of right of way Control Section Job (CSJ) numbers for each new mapping project.

The documents produced by the Surveyor, or the Surveyor’s subcontractors, are the property of TxDOT, and release of any such document must be approved by TxDOT.

9.5.2 ROW Monuments

Upon final submittal of the ROW documents to TxDOT, Developer shall set, using permanent and stable monuments as defined in Section 663.17 of the General Rules of Procedures and Practices of the Texas Board of Professional Land Surveying (TBPLS), all significant points along all ROW lines of the Project including the following:

- Points of curvature (PCs)
- Points of tangency (PTs)
- Points of intersection (PIs)
- Points of compound curvature (PCCs)
- Points of reverse curvature (PRCs)
- All intersecting crossroad ROW lines and all property line intersections with the ROW line. These monuments shall be ½-inch iron rods, driven just below surface level, capped by a TxDOT-labeled aluminum cap (rod-and-cap monument)
- All beginning and ending points of Control of Access (Denied) lines

Upon completion of the ROW acquisition and all construction work, such that the final ROW lines will not be disturbed by construction, Developer shall replace all rod-and-cap monuments located on the final

ROW line at all points of curvature (PCs), points of tangency (PTs), points of intersection (PIs), points of compound curvature (PCCs), and points of reverse curvature (PRCs), and all intersecting crossroad ROW lines, with TxDOT Type II monuments (constructed according to current TxDOT specifications). Developer shall monument with a TxDOT Type II monument all final ROW lines where the distance between such significant ROW line points exceeds 1500 feet. ROW line intersections with property lines shall remain monumented by a ½-inch iron rod with a TxDOT aluminum cap (rod-and-cap monument).

Developer shall purchase all materials, supplies, and other items necessary for proper survey monumentation.

10 GRADING

10.1 General

Developer shall conduct all work necessary to meet the requirements of grading, including clearing and grubbing, excavation and embankment, removal of existing buildings, pavement and miscellaneous structures, subgrade preparation and stabilization, dust control, aggregate surfacing and earth shouldering, in accordance with the requirements of this Section 10.

Developer shall demolish or abandon in place, all existing structures within the Project ROW, including but not limited to, pavements, bridges, and headwalls that are no longer required for service, or are required to be treated as described in Section 4 (Environmental). Any features that are abandoned in place shall be removed to at least two feet below the final finished grade.

10.2 Preparation within Project Limits

Developer shall develop, implement, and maintain, for the Term, a Demolition and Abandonment Plan that considers types and sizes of Utilities and structures that will be abandoned during the Term. The plan shall ensure that said structures are structurally sound after the abandonment procedure. The plan shall account for conditions in the Ultimate and Interim Configurations.

TxDOT reserves the right to require Developer, at any time to salvage and deliver to a location designated by TxDOT within the TxDOT District in which the Project is located, any TxDOT-owned equipment and materials in an undamaged condition. TxDOT reserves the right to require Developer to salvage and deliver to a reasonable location designated by TxDOT any ITS equipment and materials in an undamaged condition.

The material from structures designated for demolition shall be Developer's property. All material removed shall be properly disposed of by Developer outside the limits of the Project.

10.3 Slopes and Topsoil

Developer shall exercise Good Industry Practice regarding design limitations and roadside safety guidelines associated with the design of slopes along roadways. Developer shall adjust grading to avoid and minimize disturbance to the identified waters of the U.S.

Developer shall perform finished grading and place topsoil in all areas suitable for vegetative slope stabilization (and areas outside the limits of grading that are disturbed in the course of the Work) that are not paved.

10.4 Sodding

Block sod shall be placed at all grate inlets, manholes and culvert headwalls.

10.5 Deliverables

10.5.1 Released for Construction Documents

The Demolition and Abandonment Plan shall be submitted to TxDOT for approval no later than 60 days prior to the scheduled date for NTP2.

11 ROADWAYS

11.1 General Requirements

The objectives of the Project include the provision of a safe, reliable, cost-effective, and aesthetically-pleasing corridor for the traveling public. The requirements contained in this Section 11 provide the framework for the design and construction of the roadway improvements to help attain the Project objectives.

Developer shall coordinate roadway design, construction, maintenance, and operation with other Elements of the Project to achieve the objectives of the Project.

11.2 Design Requirements

Developer shall coordinate its roadway design with the design of all other components of the Project, including aesthetics. The Project roadways shall be designed to integrate with streets and roadways that are adjacent or connecting to the Project.

Developer shall design all Elements in accordance with the applicable design criteria and Good Industry Practice based on the Design Speeds for various Elements.

The Project roadways shall be designed to incorporate roadway appurtenances, including fences, noise attenuators, barriers, and hazard protection as necessary to promote safety and to mitigate visual and noise impacts on neighboring properties.

The Design Hour Volumes (DHV) for the Design Year are summarized in Book 2, Section 11. Developer shall complete the design of the Project roadways in a manner that meets or exceeds performance requirements shown in Table 11-1 below for both AM and PM Peak Hour DHV for the Design Year. Level of Service shall be calculated by Developer using methods acceptable to TxDOT.

Table 11-1: Roadway Performance Requirements

Roadway Element	Performance Criterion	Performance Measure
Mainlanes	Level of Service (LOS)	LOS C or better
Ramps, Loops, Direct Connectors, Auxiliary Lanes	LOS of merge, diverge and weaving maneuvers	LOS C or better
Frontage Roads, City Streets	LOS	LOS C or better
Signalized Intersections	Overall Volume/Capacity (<i>V/C</i>), LOS 95th percentile queues	<i>V/C</i> < 0.85 LOS C or better Queues shall not exceed available storage during critical time period (1)
	Individual movements <i>V/C</i> , LOS, 95th percentile queues	<i>V/C</i> < 0.90 LOS D or better Queues shall not exceed available storage during critical time period (1)

Notes:

(1) "Available Storage" does not include length provided for deceleration purposes. Critical time period may be either AM or PM Peak Hours on weekdays, or other time periods or days as dictated by the location and traffic conditions.

11.2.1 Control of Access

Unless shown to be deleted in the Project Schematics for the Ultimate Configuration, Developer shall maintain all existing property accesses, including those not shown on the schematic, and shall not revise control of access without TxDOT review and the written agreement of the affected property owner.

12 DRAINAGE

12.1 General Requirements

Efficient performance of the drainage system is an integral part of the performance of the Project. In that context, all sources of runoff that may reach the Project, whether originating within or outside the Project ROW, must be accounted for in the design of the drainage facilities.

12.2 Administrative Requirements

12.2.1 Data Collection

To establish a drainage system that complies with the requirements and accommodates the historical hydrologic flows in the Project limits, Developer is responsible for collecting all necessary data, including those elements outlined in this Section 12.2.1.

Developer shall collect available data identifying all water resource issues, including water quality requirements as imposed by State and federal government regulations; National Wetland Inventory and other wetland/protected waters inventories; local floodplain requirements in FEMA-regulated floodplains; and official documents concerning the Project, such as the FEIS or other drainage and environmental studies. Water resource issues include areas with historically inadequate drainage (flooding or citizen complaints), environmentally sensitive areas, localized flooding, maintenance problems associated with drainage, and areas known to contain Hazardous Materials. Developer shall also identify watershed boundaries, protected waters, county ditches, areas classified as wetlands, floodplains, and boundaries between regulatory agencies (e.g., watershed districts and watershed management organizations).

Developer shall acquire all applicable municipal drainage plans, watershed management plans, and records of citizen concerns. Developer shall acquire all pertinent existing storm drain plans and/or survey data, including data for all culverts, drainage systems, and storm sewer systems within the Project limits. Developer shall also identify existing drainage areas that contribute to the highway drainage system and the estimated runoff used for design of the existing system.

Developer shall obtain photogrammetric and/or geographic information system (GIS) data for the Project limits that depicts the Outstanding National Resource Waters and/or impaired waters as listed by the TCEQ. Developer shall conduct surveys for information not available from other sources.

If documentation is not available for Elements of the existing drainage system within the Project limits and scheduled to remain in place, Developer shall investigate and videotape or photograph the existing drainage system to determine condition, size, material, location, and other pertinent information.

The data collected shall be taken into account in the Final Design of the drainage facilities.

12.2.2 Coordination with Other Agencies

Developer shall coordinate all water resource issues with affected interests and regulatory agencies. Developer shall document the resolutions of water resource issues.

12.3 Design Requirements

Developer shall design all Elements of the drainage facilities in accordance with the applicable design criteria and Good Industry Practice. Local requirements, if more stringent than those of the CDA Documents, shall supersede other requirements and be handled with a third party agreement.

The design of drainage systems shall include reconfiguration of the existing drainage systems within the Project limits, and design of new and reconfigured storm drainage systems as required to meet the performance requirements as defined in this Section 12.

Developer shall provide facilities compatible with existing drainage systems and all applicable municipal drainage plans or approved systems in adjacent properties. Developer shall preserve existing drainage patterns wherever possible.

Elements of the existing drainage system within the Project limits scheduled to remain in place must meet hydraulic capacity requirements as detailed in Book 2, Section 12. If any Elements of the existing system do not comply with the requirements of Section 12 (Drainage) or Section 13 (Structures), those Elements shall be replaced by Developer.

Developer may make use of existing drainage facilities, provided overall drainage requirements for the Project are achieved.

Developer shall base its Final Design on design computations and risk assessments for all aspects of Project drainage.

Developer shall design roadside open channels such that the profiles have adequate grade to minimize sedimentation.

12.3.1 *Surface Hydrology*

12.3.1.1 **Design Frequencies**

Developer shall use the design frequencies listed in Table 12-1 below.

Table 12-1: Drainage Design Frequencies

Functional Classification and Structure Type	Design					Check Flood
	2	5	10	25	50	100
Highways (main lanes):						
◆ culverts					X	X
◆ bridges					X	X
Principal arterials:						
◆ culverts			X			X
◆ small bridges			X			X
◆ major river crossings					X	X
Minor arterials and collectors (including frontage roads):						
◆ culverts		X				X
◆ small bridges			X			X
◆ major river crossings				X		X
Local roads and streets (off-system projects):						
◆ culverts	X					X
◆ small bridges	X					X
Storm drain systems on Interstate and controlled access highways (main lanes):						
◆ inlets and drain pipe			X			X
◆ inlets for depressed roadways*					X	X
Storm drain systems on other highways and frontage:						
◆ inlets and drain pipe	X					X
◆ inlets for depressed roadways*				X		X
Notes.						
* A depressed roadway provides nowhere for water to drain even when the curb height is exceeded.						

12.3.1.2 Hydrologic Analysis

Developer shall design the drainage system to accommodate the ultimate development of the drainage areas. Flood damage potential for the completed Project shall not exceed pre-Project conditions.

12.3.2 Storm Sewer Systems

Where precluded from handling runoff with open channels by physical site constraints, or as directed in Book 2, Section 12, Developer shall design enclosed storm sewer systems to collect and convey runoff to appropriate discharge points.

Developer shall prepare a storm sewer drainage report encompassing all storm sewer systems that contains, at a minimum, the following items:

- Drainage area maps for each storm drain inlet with pertinent data, such as boundaries of the drainage area, topographic contours, runoff coefficients, time of concentration, and land use with design curve number and/or design runoff coefficients, discharges, velocities, ponding, and hydraulic grade line data.
- Location and tabulation of all existing and proposed pipe and drainage structures. These include size, class or gauge, catch basin spacing, detailed structure designs, and any special designs.
- Specifications for the pipe bedding material and structural pipe backfill on all proposed pipes and pipe alternates.
- Complete pipe profiles, including pipe size, type, and gradient; station offsets from the centerline of the roadway; length of pipe; class/gauge of pipe; and numbered drainage structures with coordinate location and elevations.

This report shall be a component of the Drainage Design Report.

12.3.2.1 Pipes

Storm sewer pipes with design flow velocities less than 3 feet per second (fps) shall be designed for full flow at 80% of the internal diameter to account for sedimentation in the pipe. Other storm sewer pipes shall be designed using the full internal diameter. Storm sewers shall be designed to prevent surcharging of the system at the flow rate for the design year event. All storm sewers shall be designed and constructed to sustain all loads with zero deflection and shall have positive seals at the pipe joints.

12.3.2.2 Ponding

Developer shall design drainage systems to limit ponding, in both Ultimate Configuration and Interim Configuration, to the widths listed below for the design frequency event:

- one-half the width of the outer lane for the main lanes of interstate and controlled access highways;
- the width of the outer lane for major highways (which are highways with two or more lanes in each direction) and frontage roads;
- a width and depth that will allow the safe passage of one lane of traffic for minor highways.

12.3.3 Stormwater Storage Facilities

Developer shall complete preliminary design of the stormwater storage facilities to meet requirements for water quality, water quantity, and rate control, as determined by the Texas NPDES regulations.

Developer shall ensure that stormwater storage facilities meet the requirements listed above by performing all required analyses. Such analyses shall include flood routing analysis, which includes a detailed routing analysis for ponds affected by significant environmental issues such as hazardous waste or groundwater concerns.

12.3.4 Hydraulic Structures

Developer shall analyze existing and proposed culverts and drainage-ways impacted, replaced, or created by the Project design, for any localized flooding problems. Extract definition from TxDOT manual.

Where culvert design is influenced by upstream storage, the analysis of the storage shall be incorporated into the design of the culvert.

For all culverts, the maximum allowable headwater elevation for the design frequency shall not exceed one foot below the shoulder PI elevation of the applicable roadway low point.

All bridge hydraulic computations, designs, and recommendations shall be consistent with past studies and projects in the area by the USACE and other State or federal agency studies and projects.

Where bridge design is influenced by upstream storage, the analysis of the storage shall be considered in the design of the bridge.

12.3.4.1.1 Method Used to Estimate Flows

Developer shall ensure that the selected hydrologic method is appropriate for the conditions in the watershed.

For all crossings located within a FEMA Flood Insurance Study (FIS) with peak flow information, Developer shall gather and utilize, as appropriate, the flow information provided in the FIS and any subsequent Letters of Map Revision (LOMR) for estimating flow.

For a crossing on the same waterway as a stream gauging station with a length of record of at least 25 years, Developer shall collect and use the flow data available from the station, as appropriate, to determine design flows within the following limitations, provided there is no major control structure (e.g., a reservoir) between the gauge and the Project:

- For crossings near the gauging station on the same stream and watershed, use the discharge directly for a specific frequency from the peak stream flow frequency relationship.
- For crossings within the same basin but not proximate to the gauging station, transposition of gauge analysis results is allowable.
- For crossings not within a gauged basin, the peak-flow flood frequency shall be developed using data from a group of several gauging stations based on either a hydrologic region (e.g., regional regression equations), or similar hydrologic characteristics.
- If no significant changes in the channel or basin have taken place during the period of record, the stream gauging data may be used. The urbanization character of the watershed must not be likely to change enough to affect significantly the characteristics of peak flows within the total time of observed annual peaks and anticipated service life of the highway drainage facility.

For crossings not located within a FEMA FIS or on a gauged waterway, Developer shall select the appropriate method for calculating the design flows based on site conditions, and Good Industry Practice.

12.3.4.1.2 Design Frequency

Major river crossings, bridges, culverts and storm drain systems shall be designed for the design-year frequency corresponding to the functional classification of the associated roadway. The functional classification for each roadway is shown in Book 2, Section 11.

Developer shall evaluate bridges for contraction scour and pier scour concerns and incorporate protection in accordance with Good Industry Practice.

For interstate highways, the minimum overtopping flood to be used in the detailed design shall be the 50-year frequency.

12.3.4.1.3 Hydraulic Analysis

Developer shall design riprap at abutments in accordance with the procedures outlined in HEC-23. For bridge abutments in urban areas, Developer shall install protection in accordance with the Project's aesthetic plan.

12.3.4.1.4 Bridge/Culvert Waterway Design

For existing crossings, Developer shall analyze the existing structure with the proposed flows to ensure the headwater does not exceed that of the current conditions. If this condition is not met, Developer shall design a replacement structure with sufficient capacity to pass the design-frequency flows and ensure the maximum headwater for any frequency event does not exceed that of the corresponding event for the current condition. Culvert extensions may increase the headwater elevation, but not above the maximum allowable headwater, with respect to adjacent property and floodplain concerns.

Bridge waterway design shall maintain the existing channel morphology through the structure, if possible.

12.3.4.1.5 Bridge Deck Drainage

Runoff from bridge decks shall be carried off the bridge and into the adjacent roadway drainage system. The roadway drainage design shall include bridge approach drains to intercept gutter flow at each end of the bridge. Stormwater flowing toward the bridge shall be intercepted upstream from the approach slab. Runoff from bridge deck drainage shall be treated as required by TCEQ regulation prior to discharge to the natural waters of the State.

Open deck drains are not permissible for bridges passing over waterways or other roadways. If ponding width limits require, runoff shall be conveyed in a closed system through the bridge columns to the roadway drainage system below.

12.3.4.1.6 Drainage Report for Major Stream Crossings

Developer shall prepare a report for each major stream crossing. The report shall include the detailed calculations and electronic and printed copies of the computer software input and output files, as well as a discussion about hydrologic and hydraulic analysis and reasons for the design recommendations. At a minimum, for each crossing the report shall include:

Hydrology

- Drainage area maps with watershed characteristics, hardcopy
- Hydrologic calculations (where computer software is used, both hardcopy and electronic input and output files)
- Historical or site data used to review computed flows

Hydraulics and Recommended Waterway Opening and/or Structure

- Photographs of Site (pre- and post-construction)
- General plan, profile, and elevation of recommended waterway opening and/or structure
- Calculations – hardcopy of output, as well as electronic input and output files for all computer models used for final analysis or for permit request, as well as summary of the basis of the models
- Cross-sections of waterway (Developer shall provide a hard copy plot, plus any electronic data used)
- Channel profiles

Scour Analysis

- Channel cross-sections at bridge showing predicted scour
- Calculations and summary of calculations, clearly showing predicted scour and assumptions regarding bridge opening and piers used to calculate predicted scour
- Discussion of review of long-term degradation/aggradation and effects

- Recommendation for abutment protection

This report shall be a component of the Drainage Design Report.

12.4 Construction Requirements

Developer shall design drainage to accommodate construction staging. The design shall include temporary erosion control ponds and other Best Management Practices needed to satisfy the NPDES and other regulatory requirements. The water resources notes in the plans shall include a description of the drainage design for each stage of construction.

12.5 Deliverables

Within 30 days of Service Commencement, Developer shall submit to TxDOT, as part of the record set documents, a Drainage Design Report, which shall be a complete documentation of all components of the Project's drainage system. At a minimum, the Report shall include:

- Record set of all drainage computations, both hydrologic and hydraulic, and all support data.
- Hydraulic notes, models, and tabulations
- Bridge and culvert designs and reports for major stream crossings
- Pond designs, including graphic display of treatment areas and maintenance guidelines for operation
- Correspondence file
- Drainage system data (location, type, material, size, and other pertinent information) in a suitable electronic format
- Storm sewer drainage reports (if applicable)

13 STRUCTURES

13.1 General Requirements

The structural Elements of the Project, including bridges, culverts, drainage structures, signage supports, illumination assemblies, traffic signals, retaining walls, and sound walls, shall be designed and constructed in conformance with the requirements of the CDA Documents and Good Industry Practice, in order to provide the general public a safe, reliable, and aesthetically-pleasing facility.

13.2 Design Requirements

13.2.1 *Design Parameters*

Developer shall ensure that bridges crossing over waterways withstand a 100-year frequency event with no loss of structural integrity.

Bridges crossing over the Ultimate Configuration shall, at a minimum, be designed to accommodate the Ultimate Configuration and all planned expansions or updates of each facility by its respective owner as designated in the owner's current transportation master plan. Alignments shall meet the requirements indicated in Book 2, Section 11 for the functional classification of each roadway. Developer shall design bridge structures required for the Interim Configuration, if applicable, to the total length and span arrangement required for the Ultimate Configuration, including spanning future lanes that will be constructed below the structure as a part of the Ultimate Configuration.

Developer shall design bridge structures to accommodate the Ultimate Configuration and construct bridge structures to the width required for the interim configuration. Developer shall ensure that bridges constructed for the interim configuration can be widened to the Ultimate Configuration width at a later date with minimal or no impact to aesthetics and traffic.

Direct-connect structures shall be constructed to satisfy the Ultimate Configuration. In locations where the interim configuration does not call for the construction of the direct-connect structures, Developer shall make provisions to accommodate the future construction.

13.2.2 *Bridge Design Loads and Load Ratings*

Developer shall provide to TxDOT both an inventory and an operating rating of the constructed structures using a form provided by TxDOT. Load ratings shall be in accordance with AASHTO's *Manual for Condition Evaluation of Bridges*.

13.2.3 *Bridge Decks and Superstructures*

Timber bridges, masonry bridges, and structural plate arches are not allowed. Bridges shall not use intermediate hinges.

Developer shall minimize the number of deck joints wherever possible. Developer shall locate joints to provide for maintenance accessibility and future replacement.

Developer shall protect sidewalks from vehicular impact by a TxDOT-approved bridge railing as required in the TxDOT *Bridge Railing Manual* based on roadway Design Speed. For interim configuration, pedestrian rail shall be used along structure pavement edges and installed to minimize future damage when accommodating the Ultimate Configuration.

To the extent possible, Developer shall make bridge superstructures, joints, and bearings accessible for long-term inspection and maintenance. Developer shall make open-framed superstructures accessible with walkways or by use of ladders or an under-bridge inspection truck. Where not possible, the Elements shall conform to the Handback Requirements.

Developer shall install locked entryways on all hatches and points of access.

13.2.4 Bridge Foundations

Developer's bridge span arrangement and foundation locations shall accommodate the Ultimate Configuration.

Developer shall not use spread footings in locations with scour potential.

13.2.5 Bridge Railing and Barriers

All barrier systems used on the Project shall meet current crash test and other safety requirements as determined by TxDOT. All testing and associated costs for non-standard railings shall be the sole responsibility of Developer and shall be accomplished through a third party acceptable to TxDOT. TxDOT will provide a current list of standard railing in Book 2, Section 13.2.5 and will provide updated lists upon request. Developer shall protect sidewalks from vehicular impact by using TxDOT-approved bridge railings. For interim configuration, pedestrian rail shall be used along structure pavement edges and installed to minimize future damage when accommodating the Ultimate Configuration.

13.2.6 Retaining Walls

To the extent possible, Developer shall design and construct components of the interim configuration and Ultimate Configuration to provide embankments without the use of retaining walls. Where earthen embankments are not feasible, Developer may use retaining walls.

Metal walls, including bin walls and sheet pile walls, recycled material walls and timber walls are not allowed.

If pipe culverts are to extend through the retaining walls or noise walls, the pipe shall be installed so that no joints are located within or under the wall.

No weep holes through the face of the retaining walls will be allowed, except at the base of the walls.

13.2.7 Noise/Sound Walls

Developer shall design and construct the noise/sound walls to achieve the decibel reduction requirement in the NEPA Approval(s).

Panel design and construction shall limit the risk of falling debris resulting from traffic impacting the sound wall.

Timber sound walls are not allowed.

13.2.8 Drainage Structures

In developing the design of drainage structures, Developer shall account for maximum anticipated loadings in both the interim configuration and Ultimate Configuration.

Energy dissipaters, if used, shall be considered as structural Elements.

13.2.9 Sign, Illumination, and Traffic Signal Supports

For bridges and walls longer than 500 feet, sign supports shall be provided at 500-foot intervals. The sign supports shall accommodate sign areas up to and including 16 square feet.

Developer shall design overhead and cantilever sign supports to accommodate the Ultimate Design configuration. Cantilever and sign bridge supports shall be placed outside the clear zone or shall be otherwise protected by appropriate safety measures.

13.3 Construction Requirements

13.3.1 Concrete Finishes

Concrete finishes shall comply with the performance requirements as stated in Book 2.

13.3.2 Structure Metals

Welding shall be in accordance with the requirements of the ANSI/AASHTO/AWS DI. 5-96 Bridge Welding Code.

13.4 Deliverables

Developer shall submit an inventory and operating ratings of constructed structures with the Record Drawings.

14 RAIL

14.1 General Requirements

This section defines the criteria required for the Project to accommodate and/or design and construct (i) a potential rail corridor within, and/or (ii) facilities and structures for rail line(s) crossing, the Project ROW.

If the Project includes a rail corridor within the Project ROW, Developer shall prepare a geometric design for the rail corridor. Developer's PMP shall set forth an approach, procedures, and methods for the rail corridor design and construction meeting the requirements set forth in the CDA Documents.

Developer shall demonstrate, with the submittal of the Final Design Documents, the potential rail corridor design reasonably accommodates and is compatible with the requirements of the Ultimate Configuration.

14.2 Railroad Design Standards

Developer shall prepare the geometric design of the railroad Elements following Good Industry Practice and incorporating the usual and customary design standards and operating requirements of the operating railroads that has or is expected to have an agreement with TxDOT.

Developer's design shall minimize service interruptions to existing rail lines.

At highway-rail grade crossings, the roadway and drainage design parameters shall be maintained at the crossing, except that the cross slope of the pavement may be transitioned to match the grade across the rail line.

Construction details and specifications shall conform to the requirements shown in Book 2.

14.3 Project Work Affecting Railroad Operations

Should the Project cross a railroad right of way owned by an operating railroad, Developer shall coordinate the Work with the operating railroad.

14.3.1 Railroad Agreement

Developer shall be responsible for obtaining the required approvals, permits, and agreements as required for the Work, including any railroad related Work.

14.3.2 Agreement for Construction, Maintenance and Use of Right of Way

Whenever a license agreement for construction, maintenance, and use of railroad ROW (hereinafter called the "License Agreement") between the operating railroad and TxDOT is required, Developer shall prepare all the documentation required to obtain the License Agreement, including preparation of the License Agreement application on behalf of TxDOT, the Plans and specifications, making necessary modifications as required, and preparation of the License Agreement.

Developer shall submit the draft License Agreement to TxDOT for transmittal to the operating railroad. After all comments have been incorporated or satisfactorily resolved by either Developer, railroad or TxDOT, Developer shall submit a complete and final License Agreement to TxDOT for execution.

14.3.3 Operation Safety

Developer shall arrange with the operating railroad for railroad flagging as required. Developer shall comply with the operating railroad's requirements for contractor safety training prior to performing Work or other activities on the operating railroad's property.

14.3.4 Railroad Right of Entry Agreement

In order to enter the operating railroad's right-of-way to perform the Work, Developer shall secure a railroad Right of Entry Agreement and shall coordinate the arrangements of the necessary agreements directly with the operating railroad.

14.3.5 Developer Right of Entry Agreement

Developer shall cooperate and coordinate with all operating railroads for access by the operating railroad and/or their agents to the rail ROW as necessary for rail maintenance and operations activities.

14.3.6 Insurance Requirements

Developer shall procure and maintain, prior to working adjacent to and entry upon operating railroad property, insurance policies naming TxDOT, TxDOT's Consultants, and railroad as named insured.

Developer shall obtain the following types of insurance:

1. Railroad Protective Liability Insurance Policy
2. Comprehensive General Liability Insurance
3. Contractors' Protective Liability Insurance.

All insurance policies shall be in a form acceptable to the operating railroad. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by Developer upon operating railroad property.

14.4 Construction Requirements

Developer shall comply with all construction requirements and specifications set forth by the operating railroad.

Developer shall be responsible for scheduling the work to be completed by operating Railroad as well as the work to be completed by its own forces. Developer shall be responsible for all costs associated with the railroad/transit force account work.

15 AESTHETICS AND LANDSCAPING

15.1 General Requirements

Aesthetics play a significant role in tolled facilities. As paying customers, motorists expect a higher standard for all Elements of the Project, including aesthetic value. This [Section 15](#) defines requirements with which Developer shall design and construct aesthetic treatments for the roadway, structures, drainage, and landscaping Elements of the Project. Aesthetic treatments shall be designed to harmonize with the local landscape and architecture, as well as the developed themes of the local setting. Developer shall coordinate with local and State agencies to achieve this harmonization.

15.2 Administrative Requirements

This [Section 15](#) presents minimum aesthetics and landscape design requirements for Project designs. For purposes of this [Section 15](#), the following list of items will be considered the aesthetics Elements of the Project design:

- Material, finish, color, and texture of bridge Elements
- Materials, finish, and color of barriers and railings
- Paved slope treatments
- Finish, color, and texture of retaining and noise walls
- Contour grading, slope rounding, channel treatments, and drainage
- Sculptural and artistic features of other structures
- Sidewalks, median or pedestrian specialty paving, including material, finish, and color
- Hardscape at interchanges and intersections
- Fencing
- Signage – overhead, attached, and ground-mounted
- Gantries
- Any permanent building construction within the Project, including ancillary support, operational, and toll collections

15.2.1 *Aesthetics Concepts*

Developer shall prepare three aesthetics concepts of the Project for presentation to local communities and Customer Groups. Developer shall base this presentation on the principles, requirements, and strategies provided in [Section 15.3 \(Design Requirements\)](#). Before presenting the aesthetics concepts to the public, Developer shall meet and review the proposed aesthetics concepts with TxDOT. After meeting with the public, Developer shall prepare a final aesthetic concept and submit it to TxDOT for approval.

15.2.2 *Aesthetics and Landscaping Plan*

Developer shall prepare an Aesthetics and Landscaping Plan for approval by TxDOT, in its good faith discretion. This Aesthetics and Landscaping Plan shall provide guidelines and requirements for the aesthetics design of the Project. The Aesthetics and Landscaping Plan shall include all elements to fully communicate the proposed aesthetic treatment to TxDOT.

15.2.3 *Personnel*

Developer shall provide a landscape architect, registered in the State of Texas, with a minimum 5 years experience in designing aesthetics and landscaping Elements for roadway projects of similar scope and size, to develop the Aesthetics and Landscaping Plan.

15.3 Design Requirements

15.3.1 *Aesthetics Principles and Strategies*

Developer shall follow the guidelines and requirements of the approved Aesthetics and Landscaping Plan, as well as the aesthetics principles, requirements, and strategies established by TxDOT for the Project design, including the following:

- The Project design shall minimize impact on the existing natural environment to the extent possible.
- The Project design shall emphasize and enhance the existing natural context and landscape to the fullest extent possible.
- Simple geometric shapes for structures shall be used to the extent possible for continuity along the entire length of the Project.
- All bridges and other structures shall be simplified in their design, and to the greatest extent possible kept small in size, bulk, and mass.
- All structures shall be carefully detailed so as to achieve the greatest level of aesthetic quality and fit within the regional context.
- Color, texture, and form shall be used amply for all structures.
- Graphics, signage, and lighting shall be consistent along the entire length of the Project.
- Existing trees and rock outcroppings shall be preserved to the greatest extent possible.
- Aesthetics Elements shall be fully integrated with the overall landscape design.
- Visual quality of the landscape shall be consistent along the entire length of the Project.
- Native-area and/or naturalized plant materials that exhibit good drought tolerance shall be used to the extent possible.
- Aesthetic Elements shall be easy to maintain and resistant to vandalism and graffiti.

15.3.2 *Walls*

Developer shall design noise/sound walls to be similar in color, texture, and style to those of retaining walls, and shall develop an aesthetics treatment that is consistent with other physical features such as structures, landscaping, and other highway components.

Developer shall apply aesthetic treatments to the vertical surfaces of retaining and noise/sound walls where the surface is visible from the roadway or adjacent houses. Consistent treatments shall be used for retaining and noise/sound walls that articulate the design themes established for the Project.

Developer shall pay special attention to aesthetic design Elements and utilize high aesthetic quality of finishes and materials at interchanges and approaches to toll collection points.

15.3.3 *Bridges and Other Structures*

All aesthetic treatments for structural Elements shall be coordinated with Developer's structural design team to facilitate constructability and maintain safety requirements.

No exposed conduits or drain pipes will be allowed on bents, columns, bridge beams, or any other visible surface.

15.3.4 *Trees, Shrubs, and Other Plant Materials*

All trees, shrubs, deciduous vines, and perennials shall comply with the applicable requirements of *ANSI Z60.1 American Standard for Nursery Stock*.

Developer shall use plant species native to the area or naturalized for the Project Site. Developer shall consult with the agricultural extension agent of the applicable county and TxDOT for recommended plant species lists.

15.4 Construction Requirements

Developer shall provide TxDOT sample panels a minimum of 10 days in advance of starting construction of textured concrete surfaces. Developer shall construct sample panels in accordance with TxDOT *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* Item 427.4.B.2.d (Form Liner Finish) that comply with the principles, requirements, and strategies established by TxDOT and the Aesthetics and Landscaping Plan. TxDOT must review and approve the sample panels before any construction form liners may be ordered, obtained, or used. Developer shall provide sample panels having a textured portion at least 5.0 feet by 5.0 feet with a representative un-textured surrounding surface.

The approved sample panel shall be the standard of comparison for the production concrete surface texture.

For textured panels or concrete surfaces finished with a coating of paint or stain, Developer shall prepare a corresponding coated panel or surface area of an in-place Element for approval prior to the coating operation.

Color samples shall be provided from the Federal Standard 595B Colors Fan Deck.

15.5 Deliverables

Developer shall submit the final aesthetic concept to TxDOT for review and approval in its good faith discretion within 60 Days of issuance of NTP1.

Developer shall submit the Aesthetics and Landscaping Plan to TxDOT for review and approval in its good faith discretion within 120 Days of issuance of NTP1. The Aesthetics and Landscaping Plan approval shall be a condition of issuance of NTP2.

16 SIGNING, DELINEATION, PAVEMENT MARKING, SIGNALIZATION, AND LIGHTING

16.1 General Requirements

This Section 16 includes requirements with which Developer shall design, construct, and maintain all signing, delineation, pavement markings, signalization, and lighting, for the Project.

16.2 Administrative Requirements

16.2.1 Meetings

Developer shall arrange and coordinate all meetings with local agencies that will assume responsibility for maintaining and operating traffic signals and roadway lighting. Developer shall provide TxDOT with notification of such meetings a minimum of 48 hours prior to the start of the meeting. TxDOT, in its discretion, may attend such meetings.

Developer shall arrange and coordinate all meetings with requesting agencies or individuals regarding special signs.

16.3 Design Requirements

16.3.1 Final Design

Developer shall advance the Final Design of the signing, delineation, pavement marking, signalization, and lighting based on the preliminary operational signing schematic in Book 2. If a preliminary operational signing schematic does not exist, Developer shall prepare a draft plan to TxDOT for review and approval prior to commencing Final Design.

16.3.2 Permanent Signing and Delineation

Developer shall design and install all signs as shown on the Final Design. Signs include new signs, as well as modifications to existing sign panels and structures. Developer's design shall include the locations of ground-mounted and overhead signs, graphic representation of all signs, proposed striping, delineation placement, guide sign and special sign details, and structural and foundation requirements. Signs shall be located in a manner that avoids conflicts with other signs, vegetation, DMS, lighting, and structures.

Developer shall ensure that signs are clearly visible, provide clear direction and information for users, and comply with all applicable TMUTCD requirements.

Developer shall review with TxDOT all requests for new signs, including traffic generators, or modifications of existing sign text. Such requests are subject to TxDOT's approval.

16.3.3 Project Signs – Outside the Project ROW

For signs located outside the Project ROW but within a public ROW, Developer shall install the signs in existing rights-of-way controlled by local or other State agencies. Developer shall coordinate with applicable Governmental Entities for the design and installation of such signs.

16.3.4 Advance Toll Information Signs

For advance toll information signs, Developer shall be responsible for determining sign locations and foundation types, and design and installation of the new signs.

Developer shall use Good Industry Practice in determining the locations for advance toll information signs. At a minimum, advance toll information signs shall be installed at the following locations:

- At all locations where an existing roadway provides public access to the Project
- Prior to all entrance ramps to the Project

16.3.5 Third-Party Signs

In addition to the warning, regulatory, and guide signs within the Project ROW, TxDOT or Governmental Entities may request that third-party signs, including logo signs, be installed by a third party. Developer shall coordinate and cooperate with any third party performing such work. TxDOT may solicit input from Developer in reviewing applications for new third-party signs, but will retain sole authority for approving installation of these signs. All costs associated with fabricating and installing these signs shall be borne by the sign applicant. TxDOT may require Developer to fabricate and/or install any of these signs as a TxDOT-Directed Change.

16.3.6 Sign Support Structures

Developer shall determine foundation types and design sign foundations based upon geotechnical surveys/tests using Good Industry Practices. Designs for sign supports shall also comply with requirements in Sections 13 (Structures) and 15 (Aesthetics and Landscaping).

16.3.7 Permanent Pavement Marking

Developer shall ensure that the design and installation of all pavement markings comply with applicable TMUTCD requirements.

Developer shall mark median noses of all raised islands and inside edges of exclusive turn lanes (channelized curbs) in accordance with the requirements of TMUTCD.

16.3.8 Permanent Signalization

16.3.8.1 Traffic Signal Requirements

Developer shall design and install fully-actuated permanent traffic signals at all TxDOT-authorized intersections within Project limits. In addition, Developer shall modify, as appropriate, any existing traffic signals impacted by the Final Design. Developer shall coordinate with TxDOT and the applicable Governmental Entities to define appropriate traffic signal design requirements, local agency oversight of Developer's Work, and final acceptance of traffic signals. Developer shall coordinate with local communities for synchronization of traffic signal networks.

Developer shall provide interconnection systems between new or modified signals and any other signal system within the Project Site as required by TxDOT or the applicable local Governmental Entity. Developer shall make existing signal systems compatible with the proposed interconnections. Developer shall ensure continuous communication with the traffic signal system within the Project Site, and shall provide all communication hardware/equipment for TxDOT or the applicable local Governmental Entity to communicate with the signal systems within the Project Site.

Developer shall provide both pedestrian and vehicle detectors at all traffic signals within the Project Site.

16.3.8.2 Traffic Signal Timing Plans

Developer shall coordinate and implement signal timing plans that optimize traffic flows and provide signal coordination with adjacent intersections and arterials for all existing and new traffic signals, modified signals, and interconnected signals. Unless timing maintenance is otherwise provided by a local Governmental Entity, Developer shall be responsible for updating signal timing as necessary to maintain optimized flow.

16.3.8.3 Traffic Signal Warrants

As part of the Final Design process, Developer shall collect traffic data and prepare traffic warrant studies for intersections not signalized at the time of NTP1. The warrant studies shall address all signal warrant criteria in the TMUTCD. Developer shall make recommendations for new signal installations based on these warrant studies in consultation with TxDOT and the local Governmental Entities. TxDOT will reasonably determine if a signal or modification is required, based upon the warrant study.

All requests for signals within the Project ROW throughout the Term of the Agreement shall be subject to TxDOT approval.

Signal warrant studies shall be based on actual traffic and/or opening year traffic projections. If opening year traffic volumes are not available, opening year traffic volumes shall be calculated by applying a 50-percent reduction to the Design Year traffic projections. Developer shall conduct additional traffic signal warrant studies for all intersections located in the Project ROW, commencing six months after the Project is opened for traffic. If additional signals or modifications to existing signals are warranted, based on the traffic volumes obtained through these studies, Developer shall be responsible for installation of additional traffic signals or modification of previously-installed traffic signals. If, based on the above traffic counts, the need for a signal or signal modification is unclear, TxDOT will reasonably determine if the new signal or signal modification is required.

16.3.8.4 Traffic Signal Support Structures

Developer shall coordinate with TxDOT and the local Governmental Agencies to determine the type of traffic signal support structures. Developer shall obtain the maintaining agency's approval of traffic signal support structures to be used on new signal installations.

16.3.9 Permanent Lighting

Developer shall provide continuous roadway lighting along the highway main lanes, managed lanes, ramps, and cross streets within the Project limits.

Developer shall prepare lighting studies that consider illumination levels, uniformity, and sources for the roadways, interchanges, and special areas. Developer shall maintain an average horizontal luminance on the roadways as described in Book 2.

All third-party requests for lighting within the Project Site shall be subject to TxDOT approval.

Developer shall provide an average to minimum uniformity ratio of 3.1, with a minimum lux of 1.85 and an average lux of 6.5 to 8.6 on all traveled roadways to be illuminated. Traveled roadways include: tolled lanes, general use lanes, HOV lanes, auxiliary lanes, ramps, frontage roads, and ramp terminal intersections with cross streets.

Developer shall design the lighting system to minimize or eliminate illumination of areas outside the Project ROW.

Luminaire poles and breakaway bases shall be designed in accordance with AASHTO's *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*. For all poles located within the clear zone of the roadways, Developer's design shall incorporate breakaway devices that are pre-qualified by TxDOT.

Developer shall place all understructure lighting in a configuration that minimizes the need for lane closures during maintenance.

Developer shall determine and design appropriate foundation types and lengths for permanent lighting structures.

Developer shall not place ITS cable, fiber-optic lines, signal conductors, or any other non-lighting related cables or conductors in the lighting conduit, ground boxes, or junction boxes.

Developer shall minimize the potential hazards of lighting poles through the careful consideration of mounting options and pole placements, including the following options:

- Placing mast arms on traffic signal poles
- Placing pole bases on existing or proposed concrete traffic barrier
- Placing poles behind existing or proposed concrete traffic barrier or metal beam fence
- Placing high mast lighting outside the clear zone, especially in roadway horizontal curves

Developer shall ensure that lighting structures comply with FAA height restrictions near airport facilities. In the event that proposed or existing luminaires, mast arms, or poles infringe into an airport's or heliport's base surface, Developer shall coordinate with the FAA and TxDOT to permit or relocate such structures. If FAA restrictions prohibit lighting structures from being placed in certain areas near an airport facility, Developer shall find alternative ways of providing the required level of lighting.

16.3.10 Visual Quality

Notwithstanding the requirements of Section 16.3.8 (Permanent Signalization), Developer shall make a reasonable attempt to provide luminaires of equal height along the roadway.

16.4 Construction Requirements

16.4.1 Permanent Signing and Delineation

Developer shall use established industry and utility safety practices to erect and remove signs located near any overhead or underground utilities, and shall consult with the appropriate Utility Owner(s) prior to beginning such Work.

Developer shall leave all applicable advance guide signs and/or exit direction signs in place at all times and shall not obstruct the view of the signs to the motorist. Developer shall replace any other removed signs before the end of the work day.

Developer shall affix a sign identification decal to the back of all signs for inventory purposes and shall submit inventory information to TxDOT in a TxDOT-compatible format.

16.4.2 Permanent Pavement marking

Refer to Book 2, Section 16.

16.4.3 Permanent Signalization

Developer shall coordinate with the Utility Owner(s) and ensure necessary power service is initiated and maintained for permanent signal systems. Developer shall ensure power is provided to all Developer-installed signals.

16.4.4 Permanent Lighting

Developer shall coordinate with the Utility Owner(s) and ensure power service is initiated and maintained for permanent lighting systems. Where the Work impacts existing lighting, Developer shall maintain existing lighting as temporary lighting during construction and restore or replace prior to the commencement of the Operations and Maintenance period.

Developer shall place all bore pits safely away from traffic, provide positive barrier protection, and provide necessary signs to warn of the construction area.

Developer shall contact Utility Owners regarding their specific required working clearance requirements.

Developer shall affix an identification decal on each luminaire, ground box, and electrical service maintained and/or operated by Developer for inventory purposes and shall submit inventory information to TxDOT in a TxDOT-compatible format. This identification shall denote that these are property of Developer and shall provide a contact phone number and address in the event of Emergency or necessary maintenance.

16.5 Deliverables

All deliverables shall be presented to TxDOT in both hardcopy, and electronic form compatible with TxDOT software.

16.5.1 Permanent Signing and Delineation

Before placing any permanent signs, delineation, advance toll warning signs, third-party signs, or non-standard sign structures, Developer shall provide TxDOT a layout indicating the proposed location of such items.

16.5.2 Permanent Pavement Marking

Before placing any permanent pavement markings, Developer shall provide TxDOT a layout indicating the proposed location of such items.

16.5.3 Permanent Signalization

Developer shall provide TxDOT with copies of all signal warrant studies as required in this Section 16.

Before placing any permanent traffic signals, Developer shall provide TxDOT a layout indicating the proposed location of such items.

16.5.4 Permanent Lighting

Before placing any permanent lighting, Developer shall provide TxDOT a layout indicating the proposed location of such items.

17 INTELLIGENT TRANSPORTATION SYSTEMS

17.1 General Requirements

An Intelligent Transportation System (ITS) is necessary for monitoring the Project's traffic flow and performance. The Project ITS must accurately detect traffic and traffic operational conditions throughout the Project limits, and clearly communicate relevant and useful travel information to the people using the facility.

TxDOT may already be operating an ITS network that will need to connect to the new system provided by Developer. The Project ITS must be compatible with such in-place system(s) that TxDOT and other agencies (including other developers) are currently operating. Effective ITS planning and implementation will require significant coordination by Developer with TxDOT and other Governmental Entities that have roadways within or intersecting the Project.

17.2 Design Requirements

Developer shall provide a complete and operational ITS network throughout the Project that is expandable as capacity is increased along the Project roadways, utilizes hardware and software components consistent and compatible with TxDOT in the manner described in this [Section 17.2](#) and the other affected Governmental Entities, resistant to weather encountered in the Project area, and places components in locations that are not hazardous to Users.

Subject to the specific requirements of this [Section 17](#), Developer shall determine the number and specific locations of all ITS components.

Developer shall provide safe ingress/egress areas and structures to accommodate authorized personnel access to ITS components for maintenance and operation activities.

17.2.1 ITS Communications Requirements

Developer shall provide a communications network that has redundant routing capabilities. The communications network shall serve the highway ITS components along the highway Elements of the Project. Where necessary, as determined by TxDOT, Developer shall provide communication node buildings and cabinets to support the communications network.

17.2.2 Conduit

Developer shall determine the type, quantity, and design of the conduit above and below ground, ground boxes, and all communication cable and electrical conductors to support the ITS network and operations.

Developer shall repair each communication cable or electrical conductor that is severed or otherwise rendered not usable.

17.2.3 CCTV Cameras

Developer shall provide CCTV cameras for Incident verification and traffic management.

17.2.3.1 Equipment

Developer shall provide all necessary CCTV equipment, including cameras, camera controls, cables, and connections.

Developer shall provide a digital video format and communications protocol at all connections with TxDOT systems. The format and protocol provided by Developer shall be compatible with systems in use by TxDOT, and if necessary convertible for use by TxDOT's in-place ITS network.

17.2.3.2 Placement

Developer shall provide overlapping roadway coverage by CCTV cameras for all highway lanes to provide redundant camera field of view. CCTV cameras shall be placed to enable Developer or TxDOT to

monitor traffic conditions on highway lanes, frontage roads, connecting facilities, and entrance and exit ramps, and messages displayed on any remotely-controlled dynamic message signs in the Project area. To provide a stable video image, Developer shall mount cameras on dedicated structures unless otherwise approved by TxDOT.

17.2.3.3 Video Requirements

Developer shall provide state-of-the-art CCTV cameras that meet the requirements of this Section 17.2.3.3. Should any CCTV cameras fail to meet any of the following criteria, Developer shall replace such cameras within 48 hours of discovery of lack of compliance.

- Solid-state design with digital signal processing (DSP) for digital zoom
 - for auto/manual long-term integration (exposure) control, with built-in frame buffer
 - for auto-focus; for built-in I.D. generator, with white letters and black outline
- Conformance to a minimum of NTSC video output and EIA-170A standards
- No less than 30 frames per second (fps) color
- Able to produce clear, low-bloom, low-lag video pictures under all conditions, from bright sunlight to nighttime scene illumination of 0.02 foot-candles
- Maintenance of color quality by a continuous, through-the-lens, automatic, white balance for color temperatures from 2850 degrees Kelvin to greater than 5100 degrees Kelvin, with less than 10 IRE units unbalance
- Aspect ratio of 4:3
- Zero geometric distortion
- Signal to noise distortion of 55 dB with AGC off
- Built-in auto focus and auto iris
- Overexposure protection to prevent permanent damage to cameras when pointed at strong light sources, including the sun, for brief periods of time

17.2.3.4 Operating Requirements

Developer shall provide cameras with built-in heaters, mounting structure, and related equipment capable of operating within the following weather conditions:

- Wind load of 80 mph without permanent damage to mechanical and electrical equipment
- Ambient temperature range of -35 degrees Fahrenheit to +130 degrees Fahrenheit
- Relative humidity range not to exceed 95 percent within the temperature range of +40 degrees Fahrenheit to +110 degrees Fahrenheit
- Humidity range of 0 to 100 percent condensing

17.2.3.5 Control Requirements

Developer shall provide cameras and related equipment capable of operating with the following pan-tilt unit requirements:

- Vertical movement of + 40 degrees to – 90 degrees
- Horizontal movement of 360 degrees
- Tilt speed of 20 degrees per second
- Pan speed of 100 degrees per second
- Simultaneous pan and tilt
- RS-232 serial communications

17.2.4 Vehicle Detection

Developer shall provide permanent detection in each highway lane of the Project that measures vehicle classification, vehicular volume, lane occupancy, and speed information on the roadway. The detectors shall be non-intrusive to the roadway users. Spacing for the permanent vehicle detection shall be no

greater than 0.75 miles in each highway lane in the Project, or, at a minimum, provide one detector in each highway lane between interchanges.

Developer may attach detection units to existing structures with prior concurrence from TxDOT. Where an existing structure is not available, or in lieu of attaching the detection unit to an existing structure, Developer shall install a mounting pole solely for the vehicle detector. Any mounting poles placed specifically for ITS items shall conform to TxDOT specifications for CCTV mounting poles

17.2.5 Dynamic Message Signs (DMS)

Developer shall provide a comprehensive network of electronic DMS.

Developer shall position each DMS to allow motorists to safely view the messages being displayed. Developer shall locate the DMS to comply with large guide sign spacing.

DMS shall be used to inform motorist of the availability of alternate routes, and to advise travelers of adverse road conditions and congestion. DMS shall be placed to provide a driver-friendly sign-viewing angle at each DMS location.

17.2.6 Lane Control Signals (LCS)

Developer shall place LCS over through travel lanes on existing or proposed overhead sign structures. Maximum spacing of LCS shall not exceed one mile.

17.3 Construction Requirements

17.3.1 General

Developer shall notify TxDOT 30 days in advance of making connections to the existing TxDOT system.

Developer shall maintain existing ITS communications functionality during construction activities.

17.3.2 Salvaging Existing Items

TxDOT reserves the right to require Developer, at any time to salvage and deliver to a location designated by TxDOT within the TxDOT District in which the Project is located, any TxDOT-owned equipment and materials in an undamaged condition. TxDOT reserves the right to require Developer to salvage and deliver to a reasonable location designated by TxDOT any ITS equipment and materials in an undamaged condition.

17.3.3 Existing ITS Relocation

Developer shall relocate any existing ITS components, including hubs, satellite buildings, CCTV cameras, DMSs, detection devices, and fiber-links, as required to continue service from the existing components. Developer shall sequence construction and relocation of existing ITS components, facilities, and systems to prevent lapses in TxDOT's receipt of video or data within the Project area. The existing physical links and the proposed physical links shall be in separate physical conduits.

Before removing existing ITS items and before beginning construction of segments without existing ITS, Developer shall perform all activities necessary to maintain system operations during construction, including installing new ITS items, relocating or replacing existing ITS items, and connecting such ITS items to the existing network.

18 TRAFFIC CONTROL

18.1 General Requirements

Developer shall design, construct, operate and maintain the Project, in conformance with the requirements stated in this Section 18, to provide for the safe and efficient movement of people, goods, and services, through and around the Project, while minimizing negative impacts to Users, residents, and businesses.

18.2 Administrative Requirements

18.2.1 Traffic Management Plan

Developer shall prepare and implement a Traffic Management Plan (TMP) that includes the following items:

- Descriptions of the qualifications and duties of the traffic engineering manager, traffic control coordinator, and other personnel with traffic control responsibilities
- Procedures to identify and incorporate the needs of transit operators, Utility Owners, Governmental Entities, local governmental agencies, Emergency Service providers, school districts, business owners, and other related Users, Customer Groups or entities in the Project corridor and surrounding affected areas
- Procedures for obtaining acceptance of detours, road and lane closures and other traffic pattern modifications from applicable Governmental Entities, and implementing and maintaining those modifications
- Procedures for signing transitions during construction from one stage to the next and from interim to permanent signing
- Procedures for maintenance and replacement of traffic control devices, including pavement markings and traffic barriers, if used
- Procedures to regularly evaluate and modify, if necessary, traffic signal timings, and the procedures for the development, TxDOT approval, implementation, testing, and maintenance of all affected signals
- Procedures to coordinate with the appropriate Governmental Entities operating signal networks along the Project or Project detour routes to ensure temporary system compatibility, establish responsibilities for temporary signal installation, maintenance, operation and removal, and coordinate traffic signal timing with local signal networks
- Procedures and process for the safe ingress and egress of construction vehicles in the work zone
- Provisions to provide continuous access to established truck routes and Hazardous Material (HazMat) routes, and to provide suitable detour routes, including obtaining any approvals required by the appropriate governmental entities for these uses
- Procedures to modify plans as needed to adapt to current Project circumstances
- Procedures to communicate TMP information to Developer's public information personnel and notify the public of maintenance of traffic issues in conjunction with the requirements of Book 2, Section 3
- Descriptions of contact methods, personnel available, and response times for any deficiencies or Emergency conditions requiring attention during off-hours.

The TMP must be approved by TxDOT prior to the start of construction activities. Developer shall provide TxDOT sufficient time for review of, and comment on, the TMP. TxDOT retains the right to require revision and re-submittal of the TMP within a reasonable amount of time.

18.3 Design Requirements

18.3.1 Traffic Control Plans

Developer shall use the procedures in the TMP and the standards of the TMUTCD to develop detailed traffic control plans which provide for all construction stages and phasing, as well as all required switching procedures.

Developer shall produce a traffic control plan for each and every phase of Work that impacts traffic and involves traffic control details. Each traffic control plan shall be submitted to TxDOT for review a minimum of 10 Days prior to implementation. The traffic control plan shall include details for all detours, traffic control devices, striping, and signage applicable to each phase of construction. Information included in the traffic control plans shall be of sufficient detail to allow verification of design criteria and safety requirements, including typical sections, alignment, striping layout, drop off conditions, and temporary drainage. The traffic control plans shall clearly designate all temporary reductions in speed limits. Changes to posted speed limits will not be allowed unless specific prior approval is granted by TxDOT.

Opposing traffic on a normally divided roadway shall be separated with appropriate traffic control devices as described in Book 2, Section 18.

Developer shall maintain signing continuity on all active roadways within or intersecting the Project at all times.

Throughout the duration of the Project, Developer shall ensure all streets and intersections remain open to traffic to the greatest extent possible by constructing the Work in stages. Developer shall maintain access to all adjacent streets and shall provide for ingress and egress to public and private properties at all times during the Project.

Developer shall prepare public information notices, in coordination with Section 3 (Public Information and Communications), in advance of the implementation of any lane closures or traffic switches. These notices shall be referred to as Traffic Advisories.

18.4 Construction Requirements

Construction shall be in accordance with Developer's TMP, the manufacturer's directions or recommendations where applicable, and the applicable provisions of the TMUTCD.

18.4.1 Developer Responsibility

If at any time TxDOT determines Developer's traffic control operations do not meet the intent of the TMP or any specific traffic control plan, Developer shall immediately revise or discontinue such operations to correct the deficient conditions.

Developer shall provide TxDOT the names of the traffic control coordinator and support personnel, and the phone number(s) where they can be reached 24 hours per day, seven days per week.

18.4.2 Access

Existing bicycle and pedestrian access and mobility shall be maintained parallel with the frontage roads and across all cross streets. Access to existing transit stop locations shall be maintained during construction or reasonable alternative locations shall be provided.

18.4.3 Detours

Developer shall maintain all detours in a safe and traversable condition. A pavement transition, suitable for the posted speed of the section shall be provided at all detour interfaces.

19 MAINTENANCE

19.1 General Requirements

Developer shall maintain the Project in a manner that provides a safe and reliable transportation system for improved mobility.

19.1.1 General Maintenance Obligations

Developer shall take all necessary actions to achieve the following:

- Maintain the Project and Related Transportation Facilities in a manner appropriate for a facility of the character of the Project.
- Minimize delay and inconvenience to Users and, to the extent Developer is able to control, users of Related Transportation Facilities.
- Identify and correct all Defects and damages from Incidents
- Monitor and observe weather and weather forecasts to proactively deploy resources to minimize delays and safety hazards due to heavy rains, snow, ice, or other severe weather events.
- Remove debris, including litter, graffiti, animals, and abandoned vehicles or equipment from the Project ROW.
- Minimize the risk of damage, disturbance, or destruction of third-party property during the performance of maintenance activities.
- Coordinate with and enable TxDOT and others with statutory duties or functions in relation to the Project or Related Transportation Facilities to perform such duties and functions.
- Perform systematic Project inspections, periodic maintenance, and routine maintenance in accordance with the provisions of Developer's Maintenance Management Plan and Developer's Safety Plan.

Developer is responsible for providing all resources necessary for the performance of all activities in the Maintenance Management Plan.

Residual Life requirements are included in Table 19-1. The Performance and Measurement Table Baseline is included in Table 19-2.

19.2 Maintenance Management Plan (MMP)

Developer shall prepare a Maintenance Management Plan (MMP) that is consistent with the general maintenance obligations described in Section 19.1 (General Requirements) and defines the process and procedures for the maintenance of the Project for the Term of the Agreement. The MMP shall include performance requirements, measurement procedures, threshold values at which maintenance is required, inspection procedures and frequencies, and subsequent maintenance to address noted deficiencies, for each physical Element of the Project in accordance with Table 19-2, including impacts to Related Transportation Facilities. The MMP shall identify response times to mitigate hazards, permanently remedy, and permanently repair Defects. Response times shall be in accordance with the Performance and Measurement Table Baseline, or better. Developer shall differentiate response times for Defects that require prompt attention due to immediate or imminent damage or deterioration, excluding those items which have no impact on any parties other than Developer, and response times for other Defects. Developer shall update this plan as required, or at least annually.

Developer shall submit the MMP to TxDOT for review and approval at least 60 Days prior to the issuance of NTP2. Approval by TxDOT of the MMP shall be a condition of NTP2.

The MMP shall include procedures for managing records of inspection and maintenance activities, including appropriate measures for providing protected duplication of the records. Inspection and maintenance records shall be kept for the Term of the Agreement and shall be provided to TxDOT at the

time the Project is delivered to TxDOT, at either the expiration of the Term or earlier termination of the Agreement.

19.3 Handback Requirements

Developer shall prepare a Handback Plan that contains the methodologies and activities to be undertaken or employed to ensure that the Handback Requirements in the Agreement are achieved at the end of the Term of the Agreement. Developer shall submit the Handback Plan, including a Residual Life Methodology plan, to TxDOT for and review and approval at least 60 months before the anticipated expiration of the Term or earlier termination of the Agreement.

Developer shall perform all work necessary to meet or exceed the Residual Life requirements contained in Table 19-1 by the time of Handback of the Project to TxDOT.

Not later than 90 days before the anticipated expiration of the Term or earlier termination of the Agreement, Developer shall perform a final Residual Life Inspection that covers all physical Elements within the Project, whether or not Renewal Work has been performed for a particular Element.

Within 30 days following performance of the final Residual Life Inspection, Developer shall submit to TxDOT, for review and approval, the findings of the inspection, Residual Life test results, and Residual Life calculations.

At the point of Handback, Developer shall certify that all physical Elements of the Project comply with the Residual Life requirements defined in the Agreement.

For any Element of the Project for which a required final Residual Life is not specified in Table 19-1, the Element shall have a required final Residual Life equal to the documented serviceable life of the Element or five years, whichever is less.

Table 19-1: Residual Life Requirements

Element Category	Required Final Residual Life (yrs)	Element Category	Required Final Residual Life (yrs)	Element Category	Required Final Residual Life (yrs)
Structures		Road Pavement		Ancillary	
Reinforced concrete	50	Main lanes	10	Earthwork slopes	50
Pre-stressed concrete	50	Ramps/direct connectors	10	Metal beam guard rail	10
Structural steelwork	50	Frontage/access roads	10	Concrete barrier	20
Weathering steel	50	Toll plaza approaches	10	Impact attenuators	10
Corrugated steel	50	Local/collector roads	10	Lighting columns	10
Corrosion protection for structural steelwork	10	High mast lighting	10	Overhead signs	10
Deck surfacing	10			Traffic signal housings and mountings	10
Deck joints	10	Building and Maintenance Facilities	25	Fences	10
Bearings	30			Manhole covers, gratings, frames, and boxes	50
Railing	50	Toll Collection and TM Facilities		curbs and gutters	10
Sign / signal gantries	50			Lanterns (lamps/luminaires)	
Retaining walls	50	Drainage		Roadside traffic signs	
Noise Walls	50	Underground storm sewer systems	50	Pavement markings	
Traffic signal poles	10	Culverts	50	Delineators	
High mast lighting	10	Ditches	10		
		Inlets	50		

Table 19-2: Performance and Measurement Table Baseline

Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	PERFORMANCE REQUIREMENT	RESPONSE TO DEFECTS			INSPECTION AND MEASUREMENT METHOD*	MEASUREMENT RECORD*
				Cat 1 Hazard Mitigation	Cat 1 Permanent Remedy	Cat 2 Permanent Repair		
1) ROADWAY								
							Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's <i>Pavement Management Information System Rater's Manual</i> . Unless otherwise stated, pavement performance measurement records relate to 0.5-mile sections as described in the <i>Pavement Management Information System Rater's Manual</i> .	
	1.1	Obstructions and debris	Roadway and clear zone free from obstructions and debris	2 hrs	N/A	N/A	Visual Inspection	Number of obstructions and debris
	1.2	Pavement	All roadways have a smooth and quiet surface course (including bridge decks, covers, gratings, frames and boxes) with adequate skid resistance and free from Defects.	24 hrs	28 days	6 months	a) Pavement Condition Score Measurements and inspections necessary to derive Pavement Condition Score b) Ruts – Mainlanes, shoulders & ramps	Pavement Condition Score for 80% of Auditable Sections exceeding: <ul style="list-style-type: none"> • Mainlanes and ramps – 90 • Frontage roads – 80 Pavement Condition Score for each Auditable Section exceeding: <ul style="list-style-type: none"> • Mainlanes and ramps – 80 • Frontage roads – 70 Percentage of wheel path length

I.2 cont	24 hrs	28 days	6 months	Depth as measured using an automated device in compliance with TxDOT Standards.	with ruts greater than 1/4" in depth in each Auditable Section
				10ft straight edge used to measure rut depth for localized areas.	Depth of rut at any location greater than 0.5"
				c) Ride quality Measurement of International Roughness Index (IRI) according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles	For 80% of all Auditable Sections measured, IRI throughout 98% of each Auditable Section is less than or equal to:
				** To allow for measurement bias, an adjustment of -10 (minus ten) is made to IRI measurements for concrete pavements before assessing threshold compliance.	IRI measured throughout 98% of Auditable Section of less than or equal to:
(Renewal Work and new construction subject to construction quality standards)	Mainlanes, ramps, 0.1 mile average – 150" per mile**	Frontage roads, 0.1 mile average – 180" per mile**	IRI measured throughout 98% of each lane containing a bridge deck in any Auditable Section, 0.1 mile average – 200" per mile**		

							3-ft straightedge used to measure discontinuities	Individual discontinuities greater than 0.75"
							d) Failures Instances of failures exceeding the failure criteria set forth in the TxDOT PMIS Rater's Manual, including potholes, base failures, punchouts and jointed concrete pavement failures	Occurrence of any failure
				24 hrs	28 days	6 months	e) Edge drop-offs Physical measurement of edge drop-off level compared to adjacent surface	Instances of edge drop-off greater than 2" (Number)
							f) Skid resistance ASTM E 274 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E 524 .	<ul style="list-style-type: none"> • Mainlanes, shoulders and ramps – Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of mainlanes, shoulders and ramps are in excess of 30.
								<ul style="list-style-type: none"> • Frontage roads –Number of sections investigated as to potential risk of skidding accident and appropriate remedial action taken where average Skid Number for 0.5-mile section of frontage roads is in excess of 30.

							<ul style="list-style-type: none"> When the Skid Number is below 25 and/or when required by the Wet Weather Accident Reduction Program, areas categorized as high risk, the Concessionaire shall perform a site investigation and perform required corrective action.
		Road users warned of potential skidding hazards	24hrs	7days	N/A	Skid resistance (as above)	Instances where road users warned of potential skidding hazard where remedial action is identified.
1.3	Crossovers and other paved areas	Crossovers and other paved areas are free of Defects	24 hrs	28 days	6 months	<p>a) Potholes</p> <p>b) Base failures</p>	<p>Potholes of low severity or higher (Number)</p> <p>Base failures of low severity or higher (Number)</p>
1.4	Joints in concrete	<p>Joints in concrete paving are sealed and watertight</p> <p>Longitudinal joint separation</p>	24 hrs	28 days	6 months	<p>Visual inspection of joints</p> <p>Measurement of joint width and level difference of two sides of joints</p>	<p>Length unsealed joints greater than ¼"</p> <p>Joint width more than 1" or faulting more than ¼"</p>
1.5	Curbs	Curbs are free of defects	24 hrs	28 days	6 months	Visual inspection	Length out of alignment

* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

2) DRAINAGE

	2.1	Pipes and Channels	Each element of the drainage system is maintained in its proper function by cleaning, clearing and/or emptying as appropriate from the point at which water drains from the travel way to the outfall or drainage way.	24 hrs	28 days	6 months	Visual inspection supplemented by CCTV where required to inspect buried pipe work	Length with less than 90% of cross section clear (feet)
	2.2	Drainage treatment devices	Drainage treatment and balancing systems, flow and spillage control devices function correctly and their location and means of operation is recorded adequately to permit their correct operation in Emergency.	24 hrs	28 days	6 months	Visual inspection	Devices functioning correctly with means of operation displayed (Number)
	2.3	Travel Way	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.	24 hrs	28 days	6 months	Visual inspection of water on surface	Instances of hazardous water build-up
	2.4	Discharge systems	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant legislation and permits.	24 hrs	28 days	6 months	Visual inspection and records	Non-compliances with legislation
	2.5	Protected Species	Named species and habitats are protected.	24 hrs	28 days	6 months	Visual inspection	Compliance with the requirement

3) STRUCTURES

	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	Substructures and superstructures are free of: <ul style="list-style-type: none"> • graffiti • undesirable vegetation • debris and bird droppings • blocked drains, weep pipes manholes and chambers • blocked drainage holes in structural components • defects in joint sealants • defects in pedestrian protection measure • scour damage • corrosion of rebar 	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual.	Records as required in the TxDOT Bridge Inspection Manual Occurrences of condition rating below seven for any deck, superstructure or substructure All condition states to be one for all structure components
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			<ul style="list-style-type: none"> • paint system failures • impact damage 					
	3.2	Structure components	<ul style="list-style-type: none"> i) Expansion joints are free of: <ul style="list-style-type: none"> • dirt debris and vegetation • defects in drainage systems • loose nuts and bolts • defects in gaskets ii) The deck drainage system is free of all and operates as intended. iii) Parapets are free of: <ul style="list-style-type: none"> • loose nuts or bolts • blockages of hollow section drain holes • graffiti 	24 hrs	28 days	6 months	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration's Bridge Inspector's Reference Manual..	<p>Records as required in the TxDOT Bridge Inspection Manual</p> <p>Occurrences of condition rating below seven for any deck, superstructure or substructure</p> <p>All condition states to be one for all structure components</p>

* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

	3.2 cont.		<ul style="list-style-type: none"> • vegetation • accident damage iv) Bearings and bearing shelves are clean. v) Sliding and roller surfaces are clean and greased to ensure satisfactory performance. Additional advice contained in bearing manufacturers' instructions in the Structure Maintenance Manual is followed. Special finishes are clean and perform to the appropriate standards. vii) All non-structural items such as hoists and electrical fixings, operate correctly, are clean and lubricated as appropriate, in accordance with the manufacturer's 	24 hrs	28 days	6 months		
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		recommendations and certification of lifting devices is maintained.					
3.3	Non-bridge class culverts	Non-bridge-class culverts are free of: <ul style="list-style-type: none"> • vegetation and debris and silt • defects in sealant to movement joints • scour damage 	24 hrs	28 days	6 months	Visual inspection	Number with vegetation, debris and silt Number with defects in sealant and movement joints Number with scour damage
3.4	Gantries and high masts	Sign signal gantries, high masts are structurally sound and free of: <ul style="list-style-type: none"> • loose nuts and bolts • defects in surface protection systems • graffiti 	24 hrs	28 days	6 months	Visual inspection	Number with loose assemblies Number with defects in surface protection Number with graffiti
3.5	Load ratings	All structures maintain the design load capacity.	24 hrs	28 days	6 months	Load rating calculations in accordance with the Manual for Bridge Evaluation and the TxDOT Bridge Inspection Manual. Load restriction requirements as per the TxDOT Bridge Inspection Manual	Number of load restrictions for Texas legal loads (including legally permitted vehicles)

4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS

4.1	Pavement markings	Pavement markings are: <ul style="list-style-type: none"> • clean and visible during the day and at night • whole and complete and of the correct color, type, width and length • placed to meet the TMUTCD and TxDOT's Pavement Marking Standard Sheets 	24 hrs	28 days	6 months	a) Markings - General Portable retroreflector, which uses 30 meter geometry meeting the requirements described in ASTM E 1710	Length meeting the minimum retroreflectivity 175 mcd/sqm/lx for white Length meeting the minimum retroreflectivity 125 mcd/sqm/lx for yellow
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							Physical measurement	Length with more than 5% loss of area of material at any point
							b) Profile Markings Visual inspection	Length with spread more than 10% of specified dimensions. Length performing its intended function and compliant with relevant regulations

* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

	4.2	Raised reflective markers	Raised reflective pavement markers, object markers and delineators are: <ul style="list-style-type: none"> • clean and clearly visible • of the correct color and type • reflective or retroreflective as TxDOT standard • correctly located, aligned and at the correct level • are firmly fixed • are in a condition that will ensure that they remain at the correct level. 	24 hrs	28 days	6 months	Visual inspection	Number of markers associated with road markings that are ineffective in any 10 consecutive markers. (Ineffective includes missing, damaged, settled or sunk) [A minimum of four markers should be visible at 80' spacing when viewed under low beam headlights] Uniformity (replacement rpms having equivalent physical and performance characteristics to adjacent markers).
	4.3	Delineators & Markers	Object markers, mail box markers and delineators are: <ul style="list-style-type: none"> • clean and visible • of the correct color and type • legible and reflective • Straight and Vertical 	24 hrs	28 days	6 months	Visual inspection	Number of object markers or delineators defective or missing

5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS

	5.1	Guard rails and safety barriers	All guardrails, safety barriers, concrete barriers, etc.) are maintained free of Defects. They are appropriately placed and correctly installed at the correct height and distance from roadway or obstacles. Installation and repairs shall be carried out in accordance with the requirements of NCHRP 350 standards.	24 hrs	28 days	6 months	Visual inspection	Length of road restraint systems correctly installed Length free from defects Length at correct height Length at correct distance from roadway and obstacle
	5.2	Impact attenuators	All impact attenuators are appropriately placed and correctly installed	24 hrs	7 days	6 months	Visual inspection	Number correctly placed and installed

6) TRAFFIC SIGNS

	6.1	General – All Signs	<ul style="list-style-type: none"> i) Signs are clean, correctly located, clearly visible, legible, reflective, at the correct height and free from structural and electrical defects ii) Identification markers are provided, correctly located, visible, clean and legible iii) Sign mounting posts are vertical, structurally sound and rust free iv) All break-away sign mounts are clear of silt or other debris that could impede break-away features and shall have correct stub heights 	24 hrs	28 days	6 months	<ul style="list-style-type: none"> a) Retroreflectivity Coefficient of retro reflectivity b) Face damage Visual inspection c) Placement Visual inspection d) Obsolete signs Visual inspection 	<ul style="list-style-type: none"> Number of signs with reflectivity below the requirements of TxDOT's TMUTCD Number of signs with face damage greater than 5% of area Signs are placed in accordance with TxDOT's Sign Crew Field Book including not twisted or leaning Number of obsolete signs
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* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

	6.1 cont.		v) Obsolete and redundant signs are removed or replaced as appropriate				e) Sign Information Visual inspection	Sign information is of the correct size, location, type and wording to meet its intended purpose
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		<ul style="list-style-type: none"> vi) Visibility distances meet the stated requirements vii) Sign information is of the correct size, location, type and wording to meet its intended purpose and any statutory requirements viii) All structures and elements of the signing system are kept clean and free from debris and have clear access provided. ix) All replacement and repair materials and equipment are in accordance with the requirements of the TMUTCD x) Dynamic message signs are in an operational condition 				f) Dynamic Message Signs Visual inspection	Dynamic message signs are fully functioning
6.2	General - Safety critical signs	Requirements as 6.1, Plus: "Stop," "Yield," "Do Not Enter," "One Way" and "Wrong Way" signs are clean legible and undamaged.	2hrs	1 week	6 months	Visual inspection	Number of damaged Safety critical signs

7) TRAFFIC SIGNALS

7.1	General	<ul style="list-style-type: none"> i) Traffic Signals and their associated equipment are: <ul style="list-style-type: none"> • clean and visible • correctly aligned and operational • free from damage caused by accident or vandalism • correctly aligned and operational ii) Signal timing and operation is correct iii) Contingency plans are in place to rectify Category 1 defects not immediately repairable to assure alternative traffic control 	2 hrs	24 hrs	6 months	a) General condition Visual inspection b) Damage Visual inspection c) Signal timing Timed measurements d) Contingency plans Records Review	Signals are clean and visible Signals are undamaged Installations have correct signal timings Full contingency plans are in place
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			is provided during a period of failure					
	7.2	Soundness	Traffic Signals are structurally and electrically sound	24 hrs	28 days	6 months	a) Structural soundness Visual inspection b) Electrical soundness Testing to meet NEC regulations	Inspection records showing safe installation and maintenance
	7.3	Identification marking	Signals have identification markers and the telephone number for reporting faults are correctly located, clearly visible, clean and legible	N/A	28 days	6 months	Visual inspection	Inspection records showing identification markers and other information are easily readable
	7.4	Pedestrian Elements and Vehicle Detectors	All pedestrian elements and vehicle detectors are correctly positioned and fully functional at all times	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance

* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

8) LIGHTING

	8.1	Roadway Lighting – General	i) All lighting is free from defects and provides acceptable uniform lighting quality ii) Lanterns are clean and correctly positioned iii) Lighting units are free from accidental damage or vandalism iv) Columns are upright, correctly founded, visually acceptable and structurally sound	24 hrs	28 days	6 months	a) Mainlane lights operable Night time inspection or automated logs b) Mainlane lights out of action Night time inspection or automated logs	Number of sections with less than 90% of lights functioning correctly at all times Instances of more than two consecutive lights out of action
	8.2	Sign Lighting	Sign lighting is fully operational	24 hrs	28 days	6 months	Night time inspection or automated logs	Instances of more than one bulb per sign not working
	8.3	Electrical Supply	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning	24 Hrs	7 Days	1 Month	Testing to meet NEC regulations, visual inspection	Inspection records showing safe installation and maintenance

8.4	Access Panels	All access panels in place at all times.	24 Hrs	7 Days	1 Month	Visual Inspection	Instances of missing access panels
8.5	High Mast Lighting	i) All high mast luminaries functioning on each pole ii) All obstruction lights are present and working (if required) iii) Compartment door is secure with all bolts in place iv) All winch and safety equipment is correctly functioning and maintained without rusting or corrosion (for structural requirements refer to Element Category 3)	24 hrs	48 hrs	1 Month	Yearly inspection and night time inspections or automated logs	Instances of two or more lamps not working per high mast pole Identification of other defects
9) FENCES, WALLS AND SOUND ABATEMENT							
9.1	Design and Location	Fences and walls act as designed and serve the purpose for which they were intended	24 hrs	28 days	6 months	Visual Inspection	Inspection records showing compliance
9.2	Construction	Integrity and structural condition of the fence is maintained	24 hrs	28 days	6 months	Structural assessment if visual inspection warrants	Inspection records showing compliance
10) ROADSIDE MANAGEMENT							
10.1	Vegetated Areas – Except landscaped areas – General	Vegetation is maintained so that: i) Height of grass and weeds is kept within the limits described for urban and rural areas. Mowing begins before vegetation reaches the maximum height. ii) Spot mowing at intersections, ramps or other areas maintains visibility of appurtenances and sight distance.	24 hrs	7 days	28 days	a) Urban areas Physical measurement of height of grass and weeds b) Rural areas Physical measurement of height of grass and weeds	Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 18 in Individual measurement areas to have 95% of height of grass and weeds between 5 in. and 30 in

		iii) Grass or vegetation does not encroach into or on paved shoulders, main lanes, sidewalks, islands, riprap, traffic barrier or curbs.				c) Encroachment Visual inspection of instances of encroachment of vegetation	Occurrences of vegetation encroachment in each auditable section
* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.							
10.1 cont.		iv) A herbicide program is undertaken in accordance with the TxDOT Herbicide Manual to control noxious weeds and to eliminate grass in pavement or concrete. v) A full width mowing cycle is completed after the first frost. vi) Wildflowers are preserved utilizing the guidelines in the mowing specifications and TXDOT <i>Roadside Vegetation Manual</i> .	24 hrs	7 days	28 days	d) Wildflowers Visual Inspection with audit of process. e) Sight lines Visual inspection	Adherence to vegetation management manuals Instances of impairment of sight lines or sight distance to signs
10.2	Landscaped Areas	i) All landscaped areas are maintained to their originally constructed condition. Landscaped areas are as designated in the plans. ii) Mowing, litter pickup, irrigation system maintenance and operation, plant maintenance, pruning, insect, disease and pest control, fertilization, mulching, bed maintenance, watering is undertaken as per FMP. iii) The height of grass and weeds is kept between 2" and 8". Mowing begins before vegetation reaches 8 in iv) Damaged or dead vegetation is replaced.	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance

10.3	Fire Hazards	Fire hazards are controlled	24 hrs	7 days	28 days	Visual inspection	Instances of dry brush or vegetation forming fire hazard
10.4	Trees, brush and ornamentals	<ul style="list-style-type: none"> i) Trees, brush and ornamentals on the right of way, except in established no mow areas, are trimmed in accordance with TxDOT standards. ii) Trees, brush and ornamentals are trimmed to insure they do not interfere with vehicles or sight distance, or inhibit the visibility of signs. iii) Dead trees, brush, ornamentals and branches are removed. Potentially dangerous trees or limbs are removed. iv) All undesirable trees and vegetation are removed. Diseased trees or limbs are treated or removed by licensed contractors. 	24 hrs	7 days	28 days	Visual inspection	Inspection records showing compliance
10.5	Wetlands	Wetlands are managed in accordance with the permit requirements	24 hrs	7 days	28 days	Visual inspection, assessment of permit issuers	Instances of permit requirements not met

11) REST AREAS AND PICNIC AREAS

11.1	Rest areas and picnic areas	<ul style="list-style-type: none"> i) Picnic areas are clean and neat in appearance. ii) Trash barrels are painted and attached to their supports to prevent stealing. 	24 hrs	28 days	6 months	Inspection records showing compliance	<p>Instances where 90% of measured area shall have grass and weeds height between 2 in. and 8 in.</p> <p>Mowing shall begin before vegetation reaches 8 in.</p>
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* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

11.1 cont	<ul style="list-style-type: none"> iii) Site free of any visible litter, all litter properly disposed. Litter removed from the picnic area grounds and barrels before being allowed to accumulate outside of the barrels. iv) All vehicles used in transporting litter are equipped to prevent the accumulated litter from being strewn along the roadway. v) Vegetation damaged due to improper or careless mowing and trimming operations or any other reason is replaced. vi) Weeds, grass and other undesirable growth are removed from beds of plants and shrubs as needed. Trees and shrubs are trimmed neatly. All curbs and sidewalks are edged and repaired. vii) All picnic tables are clean, free of stains and free of any defect. viii) All directional, informational, safety and any other sign is properly installed, contains accurate information and is visible from a reasonable distance. ix) All striping is intact and all parking and travel areas are 	24 hrs	28 days	6 months	<p>Number of bare ground areas larger than 5 square feet</p> <p>Number of prohibited, invasive or noxious weeds present.</p> <p>Occurrences of encroachment of vegetation or debris for more than two (2) inches onto any curb or sidewalk located throughout each rest area.</p> <p>Occurrences of deviation of soil or mulch above or below the top of the curb.</p> <p>Paved surfaces maintained clean and safe with minimal obstruction.</p> <p>Occurrences of undermining greater than 2"</p> <p>Number of unsealed cracks > ½ inch.</p>
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			clearly marked.					
			x) All curbs are in place and intact.					Number of lights fully functional.

12) EARTHWORKS, EMBANKMENTS AND CUTTINGS

	12.1	Slope Failure	All structural or natural failures of the embankment and cut slopes of the Facility are repaired	24 hrs	28 days	6 months	Visual inspection by geotechnical specialist and further tests as recommended by the specialist	Recorded instances of slope failure
	12.2	Slopes - General	Slopes are maintained in general conformance to the original graded cross-sections, the replacement of landscaping materials, reseeding and re-vegetation for erosion control purposes and removal and disposal of all eroded materials from the roadway and shoulders	24 hrs	28 days	6 months		Inspection records showing compliance

* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

13) ITS and ETCS EQUIPMENT

13.1	ETCS Equipment – Maintenance	<p>All ITS and ETCS equipment is fully functional and housing is functioning and free of defects.</p> <ul style="list-style-type: none"> i) All equipment and cabinet identification numbers are visible, sites are well drained and access is clear. ii) Steps, handrails and accesses are kept in a good condition. iii) Access to all communication hubs, ground boxes, cabinets and sites is clear, iv) All drainage is operational and all external fixtures and fittings are in a satisfactory condition. v) All communications cable markers, cable joint markers and duct markers are visible and missing markers are replaced. vi) Backup power supply system is available at all times 	24 hrs	14 days	1 month	Visual Inspection	Inspection records showing compliance
13.2	VES Equipment - Maintenance	All VES equipment is kept clean, the identification numbers are visible.	24 hrs	14 days	1 month	Visual Inspection	Inspection records showing compliance
13.3	Dynamic Message Sign Equipment	<p>Dynamic Message Signs are free from faults such as:</p> <ul style="list-style-type: none"> i) Any signal displaying a message which is deemed to be a safety hazard ii) Failure of system to clear sign settings when appropriate. iii) 2 or more contiguous sign failures that prevent control office setting strategic diversions iv) Signs displaying an incorrect message. 	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance

13.4	CCTV Equipment	CCTV Systems are free from serious faults that significantly limit the availability of the operators to monitor the area network, such as: i) Failure of CCTV Systems to provide control offices with access and control of CCTV images ii) Failure of a CCTV camera or its video transmission system. iii) Failure of a Pan / Tilt unit or its control system. iv) Moisture ingress onto CCTV camera lens v) Faults that result in significant degradation of CCTV images	2 hrs	24 hrs	14 days	Defect measurement dependent on equipment	Inspection records showing compliance
13.5	Vehicle Detection Equipment	All equipment free of defects and operational problems such as; i) Inoperable loops. ii) Malfunctioning camera controllers.	2 hrs	24 hrs	1 month	Defect measurement dependent on equipment Traffic Detector Loops: Loop circuit's inductance to be > 50 and < 1,000 micro henries. Insulation resistance to be > 50 meg ohms.	Inspection records showing compliance Instances of loops out of compliance

* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

14) TOLLING Facilities and Buildings (Not Used)

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15) AMENITY

15.1	Graffiti	Graffiti is removed in a manner and using materials that restore the surface to a like appearance similar to adjoining surfaces	24 hrs	28 days	6 months	All graffiti is considered a Category 1 defect	Inspection records showing compliance
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16) SNOW AND ICE CONTROL

	16.1	Travel lanes	Maintain travel way free from snow and ice	2hrs	N/A	N/A	Maximum 1hr response time to complete manning and loading of spreading vehicles Maximum 2hrs from departure from loading point to complete treatment and return to loading point Maximum 1hr response time for snow and ice clearance vehicles to depart from base	Inspection records showing compliance
	16.2	Weather Forecasting	weather forecast information is obtained and assessed and appropriate precautionary treatment is carried out to prevent ice forming on the travel way	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance
	16.3	Operational Plans	Operate snow and ice clearance plans to maintain traffic flows during and after snowfall and restore the travel way to a clear condition as soon as possible.	2hrs	N/A	N/A	Operations plan details the process and procedures in place and followed	Inspection records showing compliance

17) INCIDENT RESPONSE

	17.1	General	Respond to Incidents in accordance with Section 22.	1 hr	N/A	N/A	Response times met for 98% of incidents measured on a 1 year rolling basis. No complaints from Emergency Services.	Inspection records showing compliance
	17.2	Hazardous Materials	For any hazardous materials spills, comply with the requirements of Section 22.	1 hr	N/A	N/A	FMP details the process and procedures in place and followed.	Inspection records showing compliance
	17.3	Structural assessment	Evaluate structural damage to structures and liaise with emergency services to ensure safe working in clearing the incident	1 hr	N/A	N/A	Inspections and surveys as required by incident	Incident reports showing compliance
	17.4	Temporary and permanent remedy	Propose and implement temporary measures or permanent repairs to Defects arising from the Incident. Ensure the structural safety of any	24hrs	28 days	N/A	Review and inspection of the incident site	Auditable inspection records showing compliance

			structures affected by the incident					
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18) CUSTOMER RESPONSE

	18.1	Response to inquiries	Timely and effective response to customer inquiries and complaints.	48 hrs	28 days	N/A	Contact the customer within 48 hours following initial customer inquiry.	Number of responses within specified times
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* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

	18.1 cont			48 hrs	28 days	N/A	All work resulting from customer requests is scheduled within 48 hours of customer contact. Follow-up contact with the customer within 72 hours of initial inquiry. All customer concerns/requests are resolved to TxDOT's satisfaction within 2 weeks of the initial inquiry.	
	18.2	Customer contact line	Telephone line manned during business hours and 24 hour availability of messaging system. Faults to telephone line or message system rectified	24 hrs	28 days	N/A	Instances of line out of action or unmanned	Operations records showing non availability including complaints from public.

19) SWEEPING AND CLEANING

	19.1	Sweeping	i) Keep all channels, hard shoulders, gore areas, ramps, intersections, islands and frontage roads swept clean, ii) Clear and remove debris from traffic lanes, hard shoulders, verges and central reservations, footways and cycle ways iii) Remove all sweepings without stockpiling in the right of way and dispose of at approved tip.	24 hrs	28 days	6 months	Buildup of dirt, ice rock, debris, etc. on roadways and bridges not to accumulate greater than 24" wide or 1/2" deep	Inspection records showing compliance
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19.2	Litter	<ul style="list-style-type: none"> i) Keep the right of way in a neat condition, remove litter regularly ii) Pick up large litter items before mowing operations. iii) Dispose of all litter and debris collected at an approved solid waste site. 	24 hrs	28 days	6 months	No more than 20 pieces of litter per roadside mile shall be visible when traveling at highway speed.	Inspection records showing compliance
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* - Items in these columns shall be reviewed annually by Developer as part of the MMP to comply with Technical Documents and/or Good Industry Practice.

20 BICYCLE AND PEDESTRIAN FACILITIES

20.1 General Requirements

This Section 20 includes requirements with which Developer shall design and construct all bicycle and pedestrian facilities for the Project. Developer shall ensure the bicycle and pedestrian facilities of this Project support TxDOT's commitment to integrate bicycle and pedestrian travel into Project development. Developer shall coordinate the Elements of this Project with the existing and planned trails and other facilities of local and county administrations for pedestrians and cyclists.

20.2 Design Requirements

20.2.1 *Bicycle Facilities*

Developer's facilities shall be consistent with the region's bicycle and pedestrian plan, and accommodate existing bicycle paths and crossings, and on-street bicycle facilities. Developer shall coordinate with Governmental Entities to ensure consistency with existing and proposed bicycle facilities.

20.2.2 *Pedestrian Facilities*

Developer shall design, construct, and maintain sidewalks along the frontage roads and side streets where sidewalks currently exist and where required by State or federal regulations. Sidewalks shall comply with the *Texas Accessibility Standards*. Developer shall install pedestrian signals and curb ramps at all existing and proposed signalized intersections. All pedestrian facilities shall be designed to incorporate ambulatory, visibility, and auditory needs of all users.

Developer is responsible for obtaining Texas Department of Licensing and Regulation (TDLR) reviews and approvals of pedestrian facility design and construction.

20.2.3 *Final Design*

Consistent with the preliminary design submitted with the Proposal, Developer shall incorporate into the Project Final Design, the following elements relating to bicycle and pedestrian facilities:

- Alignment, profile, cross-section, and materials
- Points of connection to existing and proposed bicycle and pedestrian facilities
- Signing, signalization, and pavement markings
- Separation between bicycle or pedestrian facilities and the nearest travel lane
- Methods of illumination, where applicable
- Requirements of the Aesthetics and Landscaping Plan

21 TOLLING

21.1 General Requirements

In the PMP, Developer shall set forth an approach, procedures, and methods for an Open Road Toll (ORT) Electronic Toll Collection System (ETCS).

Developer shall include the ETCS design in the Final Design Documents and shall submit it in accordance with the PMP and CDA Documents. Developer shall demonstrate that its ETCS design is capable of serving the Ultimate Configuration.

Developer shall design, develop, test, integrate, deploy, operate, and maintain the ETCS to properly transmit to TxDOT a record of the tolls due from all Users in accordance with the toll rate policy and methodology set forth in the Agreement. Developer shall provide data to, and receive data from, TxDOT by means of the ETCS so as to enable TxDOT to maximize collection of all toll payments from Users in a timely, accurate, and efficient manner.

21.2 Design Requirements

Developer shall prepare the ETCS design in accordance with the requirements of this Section 21 and all applicable TxDOT Standards. Developer shall specifically identify, within the PMP, proposed Deviations from the requirements of this Section 21 and TxDOT Standards.

21.3 ETCS Design and Operational Criteria

21.3.1 ETCS Infrastructure Requirements

21.3.1.1 Mainline Tolling

Mainlane tolling (MT) shall be located such that all User vehicles are assessed a toll.

21.3.1.2 Ramp Tolling

Ramp tolling (RT) shall be located such that all User vehicles are assessed a toll. Gantry configurations, lane ETCS equipment and roadside installations shall be fully compatible and interchangeable with MT installations.

21.3.1.3 Utility and Personnel Access-way

Utility and personnel access-way (UPA) shall be designed to accommodate safe and secure access to all components of the MT and RT assembly for service/maintenance and repairs.

21.3.2 ETCS Functional Requirements

21.3.2.1 General

The ETCS shall accurately assign the toll due for each vehicle based on the User Classification and the toll rate determined according to the toll rate policy and methodology set forth in the Agreement.

The ETCS shall detect all vehicles that pass through each Tolling Zone either on the traffic lanes or on the shoulder, and generate a Transponder Transaction, a Video Transaction, or both, for each vehicle.

For each vehicle carrying a properly mounted, valid, working transponder that passes through the Tolling Zone on the traffic lanes, the ETCS shall correctly read from each transponder and produce a Transponder Transaction.

Where ETCS is unable to generate a valid Transponder Transaction, the ETCS shall capture images of the front and rear license plate of each vehicle that passes through the Tolling Zone and generate a Video Transaction. For each Video Transaction, the ETCS shall produce a transaction record that identifies the reason a valid Transponder Transaction could not be generated. ETCS shall interface with the CSC Host

to receive and transmit daily and periodic updates of the status of each transponder, to send Transponder Transactions and Video Transactions, and to receive transponder/license plate association data.

The ETCS shall interface with the CSC Host in accordance with the approved Interface Control Document (ICD).

The ETCS shall be interoperable with all transponders issued by tolling authorities sanctioned by the State of Texas.

21.3.2.2 User Classification Sub-system (UCS)

The UCS shall accurately classify each vehicle passing through the Tolling Zone, according to the User Classification. The UCS shall detect whether a vehicle is present, count the number of axles on the vehicle or determine the shape of the vehicle in order to determine the User Classification, and have the ability to accurately distinguish individual vehicles.

21.3.2.3 Video Exception Sub-system (VES)

Digitized text shall include both plate number and jurisdiction of issue for all license plates of all Users, including motorcycles.

21.4 Advance Toll Information Signs

Developer shall design, install, operate, and maintain advance toll information signs in accordance with TxDOT standards.

Developer shall submit to TxDOT for review, no later than 90 days before start of construction, a layout of the Project identifying the proposed locations and details (including proposed wording) of all advance toll information signs. Signs shall be located to provide maximum visibility to Users and situated:

- At all RTF locations providing User access to the Project
- Prior to all entrance ramps to the Project

Developer shall consult with TxDOT and shall obtain graphic design of the current TxDOT logo or logos that Developer shall integrate into the design and fabrication of guide and trailblazer signs.

21.5 ETCS Performance Requirements

ETCS shall meet the Performance Requirements stated in Table 21-1.

Table 21-1: Tolling Zone Functional Availability

<i>Function</i>		<i>Functional Availability Requirement</i>		
Vehicle detection, transponder read capability, and transaction processing		≥ 99.96%		
Video image capture capability		≥ 99.50%		
Vehicle classification capability		≥ 98.00%		
Ref	Parameter	Requirement	Measurement Method	Performance Requirement
1	Vehicle detection and transaction processing success rate	For all vehicles passing through the tolling zone, a Transponder Transaction or Video Transaction is reliably produced.	Detection success rate is defined as the total number of toll transactions recorded and transmitted through the ETCS, expressed as a percentage of the total number of vehicles passing through all tolling zones. A maximum of one toll transaction per vehicle shall be considered for each vehicle, whether a Transponder Transaction or Video Transaction.	>99.80%
2	Transponder read success rate	For all vehicles carrying a valid, properly mounted transponder and passing through the tolling zone, a correct tag transaction is reliably produced.	Transponder read success rate is defined as the number of Transponder Transactions correctly generated, expressed as a percentage of all vehicles carrying a valid, properly mounted transponder and passing through a tolling zone.	>99.95%

Ref	Parameter	Requirement	Measurement Method	Performance Requirement
3	License plate image reliability success rate	For Video Transactions, the license plate images produced by the image capture system shall be human-readable and reliably contain images from which both plate number and issuing jurisdiction can be read.	The license plate image reliability success rate is defined as the number of readable plate images in which both plate number and jurisdiction of issue are discernable and can be converted unambiguously to text by an operator, expressed as a percentage of the total number of plate images that Developer is required to obtain (excluding plate images for ineligible vehicles, <i>see Note 1</i>).	>98.00%

Note 1: Ineligible vehicles are those for which a video image is obtained that due only to one or more of the following conditions cannot be reliably read by the human eye:

- The vehicle either has no license plate or it is not mounted in the legally required position
- The license plate is covered by dirt or snow rendering it unreadable
- The license plate is damaged, bent or broken rendering it unreadable
- The license plate is blocked by an object carried by the vehicle (such as a plate frame, overhanging cargo or a trailer towing ball)
- The license plate is blocked by something in the lane such as a person or another vehicle.

Developer shall conduct an annual performance audit to verify that system reliability and accuracy has not degraded below the requirements stated herein.

No more than 30 days after the performance audit has been completed, Developer shall submit a report of the results. The report shall include, at least, the following:

- A summary of the overall testing methodology and test results
- An explanation of, and remedy for, any system deficiencies
- An appendix containing the detailed test procedures, results, and data used in evaluating the system’s operational performance

22 OPERATIONS

22.1 General Requirements

The responsibility of Developer for operations Work will begin at Service Commencement and continue for the Term of the Agreement. Developer shall institute an effective operations management system to monitor the condition of the Project and each Element within the Project and institute an effective maintenance program to comply with the performance measures established in the Maintenance Management Plan.

22.2 General Operations Obligations

Developer shall prepare an Operations Management Plan, which shall set forth in detail, at a minimum, the approach, procedures, and implementation for the following:

- Employment and training of competent personnel to carry out all aspects of the Operations Management Plan
- Coordination of activities of other entities with interests within the Project limits
- Monitoring the condition and operational performance of the Project
- Incident response, management and reporting
- Traffic operations restrictions, including periods of lane closure restrictions
- Tolling integration with other tolling agencies
- Approach, procedures, and methods for an Open Road Toll (ORT) Electronic Toll Collection System (ETCS)
- Standard operating and communication procedures for Emergency preparation, response, and recovery, including impacts from extreme weather conditions
- Planning and coordination with all affected Governmental Entities, including Emergency Services
- Liaison with any Traffic Management Centers that TxDOT or other entities may establish
- Analysis of vehicular accident patterns to identify safety issues and implement cost effective solutions to maximize safety
- Identification, containment and disposal of Hazardous Materials spills
- Prompt investigation of reports or complaints received from all sources
- Policing of the Project

Developer shall submit the Operations Management Plan to TxDOT for approval at least 60 days prior to Service Commencement; approval of the plan by TxDOT shall be a condition of Service Commencement. Maintenance and operation activities shall transition from TxDOT to Developer in accordance with the requirements listed in Book 2, Section 22.2.

Developer is to prepare the following reports on a quarterly basis, except as noted below:

- Incident Reports: For each Incident, the report shall identify the nature of the Incident, time, date, location, parties involved, and actions taken. For Incidents involving deaths, a report shall be submitted to TxDOT within 24 hours of the Incident.
- Non-Conformance Reports: For each material Defect in the Project Elements, the report shall identify the location, nature, and cause of the material Defect and the steps that will be, or have been, taken to address the material Defect.
- Traffic Reports: Each traffic report shall summarize traffic volumes along the Project on a daily, weekly, and monthly basis.
- Maintenance Work Report: Each maintenance work report is to describe the following:
 - Inspections conducted, including the date and type of inspection

- Material Defects or damage identified, including the date, infrastructure component, details of material Defect or damage
- Details of the maintenance work carried out
- Quality conformance summary (i.e., the results of a quality program).
- Environmental monitoring activities, as required in Section 4 (Environmental)
- Rehabilitation plans (annually): Description of the rehabilitation program conducted in the previous year and updates to the five-year rehabilitation plan to describe the planned rehabilitation Work and identify any changes from the previous plan
- Operations plans (annually): updates to the Operations Management Plan, including planned operating procedures and any changes from the previous operations plan

Upon request, Developer shall also provide TxDOT any technical documentation it maintains regarding the operations or maintenance Work.

22.3 Operation of the Project

22.3.1 Corridor Management

Developer shall coordinate access to the Project by companies and Governmental Entities that have a legitimate need to work within the Project ROW, including Utility operators.

22.3.2 Condition Preservation

To protect the traveling public and other Users from unsafe pavement surface conditions and to facilitate drainage, Developer shall remove accumulations of dirt, sand, and gravel from the roadways, shoulders, curbs, intersections, traffic islands, and bicycle and pedestrian paths and along medians and roadside barriers throughout the year, as necessary to provide a safe, clean, free-draining condition. Developer shall ensure traffic control measures are implemented in accordance with the TMUTCD during pavement cleaning operations so that hazardous conditions are not created for the traveling public and other Users.

22.3.3 Patrols

Developer shall conduct regular patrols of all lanes of the facility, to identify conditions that are unsafe or have the potential to become unsafe; to identify conditions that could threaten the infrastructure; and to attend to existing or changing conditions. Patrols must be conducted at least once every 24 hours during normal operating conditions, but no less frequently than every two hours during significant weather events.

22.3.4 ITS Operations

Developer shall provide TxDOT with primary access to and control of all DMS, CCTV, and vehicle detection systems placed on and data/video generated from the general use lanes.

Developer shall have primary access to and control of all DMS, CCTV, and vehicle detection systems placed on and data/video generated from the managed lanes.

TxDOT will provide Developer with secondary access to vehicle detector data, DMS status data, and CCTV video generated by systems placed on the general use lanes.

Developer shall provide TxDOT with secondary access to vehicle detector data and CCTV video generated by systems placed on the managed lanes.

Secondary access to data shared between TxDOT and Developer shall be through a center-to-center interface, conforming to the most current technology being used by TxDOT.

ITS operations and equipment shall be limited to real-time traffic information, public service announcements, construction/maintenance lane closures, and Incident notifications. Developer shall not engage in commercial use or selling of ITS data, equipment, or space.

22.3.5 Traffic Control and Incident Management

Developer shall manage access and use of the Project, including access and use by vehicles, cyclists, and pedestrians.

In the event of an Incident, Developer shall provide traffic management and cooperate with responding agencies, police, and Emergency Services, as appropriate, depending on the nature of the Incident.

Developer shall train its personnel who may be involved in Incident management and traffic management in accordance with all Laws.

22.3.6 Policing

Developer shall coordinate Project policing requirements with the appropriate law enforcement agencies to provide a level of policing consistent with that provided on other similar facilities.

Should Developer require additional policing over and above this level, Developer shall be responsible for negotiating this additional service at no additional cost to TxDOT.