

## 7 RIGHT OF WAY (ROW)

### 7.1 General Requirements

Developer's obligations in respect of the acquisition of Project ROW are set forth in Section 7.4 of the Agreement.

This section sets forth the ROW activities that are 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. The 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 displacees 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:

- 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*
- TxDOT *Project Development Process Manual*
- FHWA's *Right-of-Way Project Development Guide* (as contained in FAPG).

The requirements, practices, guidelines, procedures, and methods set forth in these manuals are further modified and supplemented herein. If any discrepancies are found between the requirements set forth above, the more stringent requirement will be applied and followed. Developer must obtain advance written approval from TxDOT for any Deviation from said requirements.

For purposes of this section, it is understood that references in the above described TxDOT manuals to TxDOT personnel, District personnel, District, District Engineer, ROW Division, Director of the ROW Division, and other similar TxDOT employees or

titles involved in the acquisition process shall be deemed to mean Developer and its authorized agents. It is the intent of this provision to allow Developer to acquire ROW parcels for the Project on behalf of the State utilizing the procedures described in the above-described TxDOT manuals, but without the direct participation of TxDOT employees; subject to TxDOT's rights of review, approval, audit and enforcement described in the Contract Documents.

Pursuant to 23 CFR §710.313(d), Developer shall (i) certify acceptance of the TxDOT *Right of Way Manual*; (ii) provide adequate access to all occupied properties; (iii) maintain utility service to occupied properties until relocation is complete; and (iv) 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. As of the Effective Date, the version in use by TxDOT is the most current version of Microstation® and supporting electronic data in GEOPAK for electronic drawings, and Microsoft Word format for all reports and documents, or fully transferable. The 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 Contract 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 and Section 2. 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), and
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:

1. 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.
2. Provide administrative support.
3. Provide for Spanish, visually impaired, or hearing impaired translation, as necessary.
4. Provide documentation and reports.
5. Produce and distribute acquisition and relocation brochures as approved by TxDOT.
6. Establish, implement, and maintain quality control procedures and quality review standards for the acquisition for Project ROW.
7. Prevent fraud, waste and mismanagement.

The Developer shall update the ROW Acquisition Plan regularly, at least quarterly, in accordance with the Contract 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 2.3.3 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 ten Business Days for Acquisition Packages that Developer submits as final and complete in accordance with Section 7.3.5 – Project ROW Acquisition Package Approval, up to a maximum of \_\_\_ Acquisition Packages. Any Submittals that would require TxDOT to review more than \_\_\_ 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 \_\_\_ 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. **[NTA – supply applicable number of packages for the Project]**

If TxDOT notifies Developer that any submitted Acquisition Package has a deficiency, Developer shall correct such deficiency and resubmit the package to TxDOT, which 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. Delays to schedule 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 five 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, which 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, 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 right of way 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 \_\_\_\_\_County(ies), Texas. 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 and 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 \_\_\_\_\_County(ies), Texas. There shall be a minimum of two land planners who will be available to assist appraisers and provide complete land plans.

Each relocation agent shall have a minimum of three years experience in relocation assistance for right of way 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, maintain complete and accurate files of all transactions and contacts with the property owners and/or their representatives, and actively work 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 real estate attorney's

responsibilities shall include the following: 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 and 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 the following information (at a minimum) as a heading:

- 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 Contract 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 Developer Responsibility for Costs**

As set forth in Section 7.4.3 of the Agreement 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 from special commissioner's hearings through jury trials, all fees and expenses for exhibits, transcripts, and photos associated with condemnation services and proceedings required by the Attorney General's Office from 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 right 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. To the extent required, TxDOT shall execute a transfer of title of the improvements within the acquired Project ROW to Developer as soon as legally permissible and in accordance with applicable Laws with respect to the same. 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 the costs of all services and preparation of all documentation for the acquisition of any temporary right or interest in real property that is 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 that are 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 shall have the following responsibilities in connection with acquisition of Project ROW:

1. Except as otherwise set forth in this section, 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 Contract Documents, by the State or by applicable Law within ten 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 XXX of the Agreement. **[NTA – Insert appropriate section number]**
  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 shall 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, 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 the 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 process, including negotiated settlements
3. Provide analysis of recommended parcel values and/or appraisal issues
4. Provide any 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. Prepare, obtain and file 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 of these Technical Requirements 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 \_\_\_ parcels. Any submittals that would require TxDOT to review more than \_\_\_ 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 make submission of the Acquisition Packages in conformance with Section 7.2.5 - 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 standard 22" x 34". 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 that are 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 states the State Plane Coordinate System and UTM zones, datum (NAD83) (HARN) (2002), and the project grid-to-surface coordinate adjustment factor.
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 that is 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. Show calculated points 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. At the 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. Upon completion of the Project ROW acquisition or as directed by TxDOT, Developer shall replace rod-and-cap monuments which were set at the significant ROW line points as described above, with TxDOT Type II monuments (constructed according to TxDOT specifications).
19. To communicate the intent of TxDOT and the surveyor to replace the set rod-and-cap monuments with TxDOT Type II monuments at some future time, Developer shall cause the Surveyor to indicate wording to that effect in the parcel descriptions, and on the parcel plats and Project ROW map sheets. An example of such wording would be “set ½-inch iron rod with TxDOT aluminum cap (to be replaced with a TxDOT Type II monument after right of way acquisition is complete)”.
20. Upon completion of the Project ROW acquisition or as directed 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, unless otherwise directed by TxDOT. Project ROW line intersections with property lines shall remain monumented by a ½-inch iron rod with a TxDOT aluminum cap (rod-and-cap monument).

21. Developer shall cause the surveyor to set additional rod-and-cap monuments for the final Project ROW lines, at a point on curve or a point on line, where the distance between significant Project ROW line points as described above exceeds 1,500 feet. Developer shall replace each rod-and-cap monument with a TxDOT Type II monument upon completion of the Project ROW acquisition or as directed by TxDOT.
22. To reference all significant points along the centerline (survey baseline), Developer shall cause to be 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.
23. 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.
24. 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”.
25. The documents that are produced by the Surveyor are the property of TxDOT, and release of any document shall be subject to TxDOT’s prior written approval.
26. Developer shall cause the surveyor to include the control 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.
27. 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.

28. 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.
29. 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 Requirements and TxDOT Standards. 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).
30. 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.
31. 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.

32. 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.
33. 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.
34. 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.

### **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, with 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 of the Acquisition Package for such parcel to TxDOT. Developer shall, at its own cost, review each title report to ensure that it complies with the format required by the Contract 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, which title policies must be in 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 its 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 that is 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*; provided, however, that all appraisals for condemnation proceedings will 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-1527-00, 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). An "environmental site assessment Phase I" 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

Schematic 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 7.3.4.1 - Appraisal Services and Section 7.3.4.2 - Appraisal Review, 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.

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.

For appraisal updates, the review appraiser will 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 will follow the procedures outlined in the TxDOT *Appraisal & 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 will 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 7.3.4 - 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 Developers 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, and 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 that have not been 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 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 purchase of ROW brochure shall include language about the use of the Declaration of Taking Procedure if the 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 in order 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 (handicap accessible) 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, which 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 displaces. 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 the 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 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 7.3.4 - Appraisal Services above. Developer must also undertake appraisal review as described in Section 7.3.4 - 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 reminder 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 specification 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 Contract 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 six feet 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.